



375-

collate 2 on 8/4/47

A10, B-IX, K5

Wing C H 413

MAXWELL I p 575, no. 7

TOPIC

Index

E. A. G. L.

C 4613

Following is a list of

the names of the persons

who have been

admitted to the

membership of the

association since

the last meeting

of the association

on the 1st of

January, 1880.

The names of the

persons who have

been admitted to

the membership of

TOPICKS

In the Laws of
ENGLAND.

Containing *Media*, apt for
Argument, and resolution of *Law*
Cases: also an Exposition of
severall words, not touched
by former *Glossaries*.

*Non omne Argumentum undique venit
ideoque non passim quærendum est, mul-
tus alioquin error est exhaustoque labore
quod non ratione scrutabimur non poter-
imus invenire nisi casu. Quintil.*



L O N D O N.

Printed by R. L. for *William Leake*, and are to
be sold at his Shop at the signe of the Crown
in *Fleetstreet*, betweene the two
Temple Gates. 1647.

TOPICS

In the Laws of

ENGLAND.

Containing Matters, apt for

Argument, and resolution of Law

Cases: also an Exposition of

several words, not usually

by former Commentaries.

Not omittit Argumentum analogum, et
aliquod non positum per se, sed
per allegoriam, et per ex-
ceptionem, et per potestatem
non potestatem, et per
verba instituta, et per
Cuncta.



LONDON.

Printed by R. E. for William Baskett, and are to
be sold at his shop in the Strand, between
St. Dunstons Church, and the two
Towers Church.



To the HONORABLE
OLIVER Saint JOHN
Esquire Solicitor
Generall,

AND

OLIVER CRUMWEL
Esquire, the Honourable, Pru-
dent, and Valiant Lieute-
nant Generall.

Honorable,

I may be matter of mar-
vell, that any thing of
Law should now be heard
but to whisper amidst the
noyse of loud Instruments of Warre;
this may Apologize, that both sides
professe the mayntenance of Laws. If

again it seeme strange to any that I
joyne for Patrons of a Lawbooke a
Sword-man, and one of the long Robe
together: let this suffice, that the
last is well known to have bin longer
time a Meccenas of Schollers, then
a Commander of Souldiers and men
are also well perswaded that the points
of these swords are bent onely against
the adversaries of those Laws which
are written upon their hilts. These
Laws are now in danger, and the
Common-wealth with them who can
sit still and do nothing like old Cre-
on, when his house was on fire em-
bracing his only daughter, but helped
nothing till himselfe and shee were
consumed in the flame. With my e-
state I cannot helpe, that was long
since taken from mee by the injustice
& oppression of the Popish Northern
Army and our own malignant Coun-
trymen who called in that Army, and
assisted them. With my body I can do
little being somewhat in yeers and
more

more unfitted by a sedentary life, besides uncalled upon for such services. I both approve and somewhat resemble the Spaniards posture, who when he is bleeding his last, and so weake hee cannot stand to fight, yet while any life is in him hee will be brodding at, and pottering upon the ground, every way with his Rapier or Dagger point as if hee would doe something, wound his enemy, &c. if he were able. These weak essays shew a minde to doe good to the publike; In them little new Law can be found, they rather shew how to use the old, the Logick of the Laws which is to be instrumentall to all other Sciences, and called by the Philosopher Organon Organon. If these observations shall have any use that way or any else, I have my ends: Your honourable favours to me who are so much one for the publike hath been reason enough to me to joyne you in this Dedication,

Eadem sentitis, eadem agitis, in foro

& in campo. The Romans called
some of their Worthies Gladii Ro-
manorum, so Marcellus, other Cli-
pei, so Fabius Maximus, both goe
together, both usefull now. I shall
not need much to implore your pro-
tections who cherish every sparke ap-
pears for the publike. The Lord make
you ride on with good luck for the re-
joynting again his Majesty, and the
great Councel of England, the Head
and the Members, and that the Laws,
one part (whereof is priviledge of Par-
liament) may be maintained and du-
ly executed, for as Bracton saith,
Parum est jus in Civitate esse, nisi
sint qui possint jura gerere, which if
I mistake not, is a main ground of this
bloudie Quarrell, which God end in
due time, and in the accomplishment of
Peace and Truth, which shall be the
continued prayer of

From my
chamber in the
Inner Temple.

Your humble Servant,

J. C.



TO THE READER.

MAn by his defection from his Maker, lost Truth as well as good, and is faine to gather up the one as well as the other by peecemeale, as a Bee that goes from flower to flower to get up any reasonable quantity of honey: How many *minutula frustula* are there found and left from one Age to another by such as have been wittie and industrious in each Science, and altogether will not make up halfe that the first man had in the bnlike *uno intuitu*, as it were. The Philosophers have left some *Principles*, *Axioms*, and *Topikes*,

the Humanists , Physitians , and
Moralists *Aphorismes* : Musicians
their *Systemata*, for to that Science
I take that word properly to be-
long, though usurped by the later
Logicians. The Lawyers their
*Maximes, Brocardica, Grounds, and
Placita* : Others their *Paradigma-
ta, Loca Media*, fit for invention and
argumentation , some of these by
experience are demonstrative, and
more immediately, certainly, and
resolvedly bring *Scientiam* , o-
thers are of a lower ranke , and are
called *Dialectica* , or *Probabilia*,
which helpe to resolve questions
and cases with a more trembling
judgement, and some fears, as they
say , least the truth may be other-
wise, and is termed opinion, as that
other knowledge; of this kinde are
these few Observations of mine,
and I call them *T O P I C K S*, in
which one may finde matter of ar-
gument for cases shall be propoun-
ded

ded, and raise Majors in which the
chiefe vigour of argument lies: I
dare not call them grounds of Law,
as hee did who once made an essay
in this kinde, yet I finde a great
Rabbin in our Law calls them *Rules* Institutes 1.
152.
of Law. I have put them down in
the most familiar way of our Books
expression, which is in various lan-
guages, which will prove most use-
full, the Law of *England* intending
matter, not words, and it brings
what we have read in our books
quickest to our apprehensions,
whereas the turning of those terms
into fine Latine, or civill Law ex-
pressions, as some of late makes un-
couth to the English Lawyer, and
far lesse usefull: There be 400 ti-
tles and terms of Law in our books,
and yet if you have present use of a-
ny of these Topicks, you cannot
finde them there, in this you may,
which will serve not onely to grace
argument, but resolve some doubts,
I

I have made each place good by
Book Cases, and some few Re-
ports, you may add more in your
daily reading without such obser-
vations, the Student will be put far
to seeke for such Rules and Cases
upon a suddain, I have put them
in an alphabeticall order, the more
easie to finde them and make use of
them, other method to dream of in
Law learning as some have done
is vaine, sithence it consists of infi-
nite particulars, of which the Logi-
cian determines thus. *Individua
non recipiuntur in methodum propter
infinitatem.* Vale.

J. C.

Contenta.

Act of God shall preiudice no man,	1
Act of a Court shall preiudice no man & contra,	2
Act the first who shall do where it is doubtful,	3
Act implicit where not sufficient but shall be explicit.	5
Act of an Enemy shall turn to my benefit, <i>ibid.</i>	
Act subsequent shall be guided by agreement precedent,	<i>ibid.</i>
Act imperfect of the part of one party shall be of both parties,	6
Act executed where it shall be defeasible and contrary,	<i>ibid.</i>
One Act may inure to two intents,	<i>ibid.</i>
Actori incumbit onus,	7
An Act to himself, where a man may do and contrary,	<i>ibid.</i>
Where part of an Act cannot be performed, yet the rest shall,	9
One shall not have benefit of his own Act, preiudice he may,	9
One shall be punished for the Act of another,	10
One shall not defeat his own Act, & <i>e contra</i> ,	11
<i>gens & consentiens pari poena pleuntur</i> , <i>ibid.</i>	
<i>posse ad esse non est bona argumentatio</i> , sic à non esse ad non posse,	<i>ibid.</i>
<i>posse ad esse bona fit argumentatio</i> ,	12
<i>non posse ad non esse bona fit argumentatio</i> , <i>ib.</i>	
Et me invito made is not my act,	13
<i>argumentum à minori ad maius tenet affirmative</i> ,	<i>ibid.</i>
	Es.

Contenta.

Bonum publicum privato preferendum,	14
Causa equalis tale causatum,	ibid.
Causatum non excedit suam causam,	15
Causans damnum equalis facienti,	ibid.
Coniunctive, and collective, words taken seorsim and discrete,	16
Causa cessante cessat effectus.	17
Coliquintida parum totum ius vitiat,	19
A coniunctis ad devisa male arguitur,	20
Coniunctorum utrumque oportet esse verum,	ibid.
Damnum absque iniuria, not punishable.	ibid.
Deus & natura ferenda,	21
Dictum partis, is not exclusive taciti dicti legit, ib.	
Disiunctorum sufficit alterum esse verum,	ibid.
Distructio facti, shall be eodem modo quo creatio.	
Dictum partis, which is no more then dictum legis operates nothing at all.	23
Dominus & servus, Judge and Minister, Subiect and Sovereign, Idem non erit, so Judge and party,	24
Dignior dat nomen rei, & regulabit eam,	25
Duty once discharged is always discharged,	26
De non existentibus & aliter existentibus, quam lex vult eadem ratio,	ibid.
Aquipollentia habent eundem in lege vigorem, ib.	
Eadem ratio, idem ius.	27
Expressum & particulare facit cessare tacitum & generale,	ibid.
Exceptio firmat regulam, concessionem, &c.	29
Etymologia verborum non præbet firmam argu- mentum,	30
Factus etiam probat,	31
Expositio verborum,	ibid.

Contenta.

usually done as

veria	In rerum natu.	69
ut	Ipsa facto	non
, ab, abs	Iuxta	ad.
abathia	Infra	
Intebac	Maeremium	
ompetent	Meniall	
onsueta	Nuper	
irciter	Pacatione	
itra	Prætextu	
infra Circa	Prima, Proxima	
discretion	Pacificæ	
Donque, then, tunc	Pro	
emise	Forfeiture	
t	Puer	
expiration	Nos, vos	
estant, being	Permittere	
Exactionibus	Res	
est, suit	Sufficienter	
Eviction	Sure, estate	
House	Similiter	
Horrible, enormous	Predict.	
Incontinenter & im-	Paratus	
mediate	Et cætera	
Infra & Maria	Comodities	
Inhabitant	Sovereigne	
Resiant, commorant	Subditus	
In. apud, ad, de	Miniments	
Interest	Expositio verborum	
In manibus	in wills.	
Inde		
Fixio iuris neminem ledere debet,		49
Fortior est obligatio partis quam legis,		50
Fortior est dispositio legis quam hominis,		ibid.
Fortior & melior est provisio legis quàm hominis,		51
Fundamento destructio cadit opus,		ibid.

- Ca Generale nihil certum ponit, 3
 Ca Generall words where they will help particular in
 Ca firmities, ibid
 Generall words in grants where they shall be
 strained by particular words in the same clause
 and contrary, 53
 Generale descendens in particulare five speciale
 shall be ruled by that speciall. 54
 He that exceeds most let him know the cole, 55
 integra lex separat & individua, ibid
 Idem taken pro simile, 56
 Inconvenience, See ibid
 Indefinitum suppl't locum universalis, ibid
 Ignorantia non excusat, 58
 Inter equales melior est conditio possidentis, ibid
 Iteration of a small offence will make it amount to
 a great one, 59
 Iniuria propria non cadit in beneficium facientis, ibid
 In presentia maioris cessat potestas minoris, 60
 Laches may preiudice but shall not ayd any man, ib
 The Law avoids circuit of action, 61
 The Law yeilds to necessity, 62
 The Law will suffer a mischief rather then an in-
 convenience, 63
 Lex non cogit ad impossibilia, 64
 Lex iudicat de impossibiliter faciendis quasi factis 66
 Lex accepit voluntatem & diligentiam pro facto
 ibid
 Lex iudicat de rebus necessario faciendis quasi re-
 ipsa factis, 67
 The Law iudgeth of that may be done as actually
 done, 68
 The

Contenta.

- The Law iudgeth of some things actually done as
not done & a converso. 69
- The Law adiudgeth the same thing in esse, & non
esset to divers purposes. ibid.
- Quod lex dicit factum, est sic acti, by the party
himself. 71
- The Law iudges that it is illegally done, as not done
at all. ibid.
- Leges priores per posteriores abrogantur, & contra.
ibid.
- Lex non cogit ad vana peragenda. 73
- Lex non haeret in syllabis vel literis modo de sub-
stantia constat. 75
- The Law is sometimes stricter then the words of
the party in force. 76
- Lex non est curiosa. ibid.
- De minimis non curat lex. 78
- Law presumes more then the party himself says. ib.
- Lex intendit optima perfecta & effectualia & le-
galia. 79
- Lex omnia suaviter, & ad melius disponit. 80
- Lex semper dabit remedium. 81
- Lex indicat de iis sufficienter vel vane factis quasi
omnino infectis. 82
- The Law will accept of that is good in grants or
pleadings, and reject the surplus. 84
- The Law is more agile in working then the act of
the party. 85
- The Law where it enioyns an Act to be done will
provide he shall not be hurt, à latere that doth
it. ibid.
- The Law regards the principall thing, and not ad-
ditionals. ibid.
- The Law adiudges the deniall to doe a thing as not
do-

Contenta.

doing it or breach of covenant.	86
The Law is not satisfied with shadows but substances.	ibid.
The Law hath an eye to the beginning of Acts.	ib.
Loquendum ut vulgus.	87
A lawfull act by matter, ex post facto, may become unlawfull.	ibid.
Malitia mutat legem.	89
Melior dabit nomen rei.	ibid.
Magis dignum trahit ad se minus.	ibid.
Magis continet in se minus.	91
Modus & conventio vincant legem & Regem & contra.	ibid.
Nihil dat, quod non habet.	95
Nemo bis punietur pro uno delicto.	97
Negativum nihil implicat, in a precepte quod redat.	ibid.
Nemo tenetur seipsum prodere.	98
Negatio duplex est affirmatio.	ibid.
Qua ne est a defetur chose ce ne serra obiect alui	99
Ou chose fait per implication serra bone, & contra.	ibid.
Ou chose serra, rule per le greinder part de le state.	100
Ouvne serra sou iudg, demesne, paymaster, carver, &c.	101
Parols ou voient amount at all & contra.	103
Parols subsequent bounded or qualified by the precedent, & e converso.	104
Parolx sont plea.	ibid.
Pœna aptabitur damno.	105
Pœna sine culpa.	ibid.
Pœna delictum superabit.	ibid.
Particeps criminis & non pœna.	106
Pœna	

Contents.

<i>Pena tollitur cum culpa, vel sequitur culpam.</i>	161d.
<i>Propositio hypothetica taken Categorice.</i>	ibid.
<i>Principio non valens tractu temporis non convalescit.</i>	107
<i>Principio valens tractu temporis non devalescit.</i>	109
<i>Principio dato sequitur concomitans, & sit sublato.</i>	ibid.
<i>Præsumptioni stabitur donec probetur in contrarium.</i>	110
<i>Qui tacet consentire videtur.</i>	111
<i>Qui sentit commodum sentire debet & onus.</i>	ibid.
<i>Qui sentit onus sentire debet & commodum.</i>	ibid.
<i>Qui per aliud facit per seipsum facere videtur.</i>	112
<i>Qui remedio destituitur re ipsa valet, si culpa absit.</i>	113
<i>Qui magis scit & potest de eo magis requiritur.</i>	ibid.
<i>Quicquid solo superstruitur solo cedit.</i>	ibid.
<i>Quicquid remittitur fieri æquat facto.</i>	114
<i>Quæ non prosunt singula iuncta iuvant.</i>	ibid.
<i>Quod necessario intelligitur non deest.</i>	ibid.
<i>Quod non capit discus rapit fiscus.</i>	115
<i>Ratio dicti minus valet quàm dictum ubi differunt.</i>	ibid.
<i>Relations.</i>	ibid.
<i>Relatio & non ad ultimum.</i>	ibid.
<i>Relation will rectifie incertainties in place, time, measure, &c.</i>	117
<i>Relation shall make things have beene, as if they had never beene.</i>	118
<i>Relation to defeat a thing, shall be intenta ad unum.</i>	119
<i>Relation will yeild to necessity.</i>	ibid.
<i>Relation shall not be to take away things collateral.</i>	120

Contenta.

<i>Relatio ad principium, &c.</i>	ibid.
<i>Relation to time, place, &c.</i>	121
<i>Relatio fit ad accommodatiora.</i>	122
<i>Relation to avoid thing or a vain thing will destroy that was good in the premises.</i>	123
<i>Semel malus semper presumitur malus & contra,</i>	124
<i>Similitudo non currit quatuor pedibus</i>	ibid.
<i>Sic utere tuo, ut non laedas alieno.</i>	ibid.
<i>Singulare distributive sumpta aequat plurali.</i>	125
<i>Synonyma will not serve serve in our Law.</i>	ibid.
<i>Surplusse, what power and influence this shall have in Grants,</i>	126
<i>Totum continet suas partes & è converso.</i>	ibid.
<i>Totius & partis eadem ratio.</i>	127
<i>Totum qui concedit partes negare non potest.</i>	ibid.
<i>Tort of his own wrong, a man shall take advantage.</i>	128
<i>Utile per inutile non vitiatur, nec emendatur.</i>	129
<i>Void, in a Statute where it is said what sease it hath, &c.</i>	131
<i>Void, where a thing shall be for part, or for a certain time onely.</i>	132
<i>Void act as to that was intended, may yet be good and effectually to a colaterall purpose.</i>	ibid.
<i>Volenti non fit iniuria.</i>	134
<i>Verba discretiva, shall not extend to ioynt words & contra.</i>	ibid.
<i>Verba coniuncta non capiuntur discretive & contra.</i>	135
<i>Vna hirundo non facit ver.</i>	136
<i>Vniuersale non comprehendit omne particulare.</i>	ib.
<i>Vbi duo iuria in una concurrunt persona æque est ac in diversis.</i>	137
<i>Vigilantibus non dormientibus subveniunt leges.</i>	ib.

Errata.

{

 Pag. 4. obligor for obliger, p. 9. l. 8. for R. I. S. p. 17. redi-
 derunt, 41. Maremium 43. margine 29. E. 3. 48. margine
 versus cap. 5. pro vide 68. l. 13. sued l. 24. bene 69. l. 14.
 Ita quod 72. l. 18. Induction l. 20. Wreccum, 76. l. 8. un-
{

 preferred 77. l. 11. resceit l. 14. manu tenere 28. devifa-
 read {

 vit l. ultimis lassise 84. l. ultima resceive 87. property, 99.
 l. 4. aluff l. 5. conus 101. l. 25. patronage 120. l. 17. Rever-
 sionor 126. murdravit, p. 131. l. 17. a second Benefice
 shall be void, 132. l. 2. Si accion capite pro case. l. 5. 13.
 Eliz. 137. l. 20. gets for its.

{

 Pag. 14. l. 16. to p. 23. marg. lin. 20. F. N. B. 44. b. c. 52 E.
 omit- {

 47. Dyer add. 365. p. 67. l. 16. after pound add. by C. 95.
 red {

 l. 15. infess, add. C. Some mistakes are in the pricks
 and commaes.

五、

This 17th September
 I have received from
 the Hon. the Secretary
 of the Admiralty
 a letter of the 14th
 inst. in relation to
 the proposed
 alterations in the
 regulations for the
 service of the
 Royal Navy.

and connect.

I **H** *He act of God shall prejudice no man.* Upon this reason it is if the heire at full age tender Livery, and dye within three moneths,

8 Report Halls
Case.

which is the time given by law to finish his Livery, he shall have no prejudice, but as much benefit as if he had actually sued it forth, and the interest of the King is determined. Lessee for the life of I.S. is disseised, now to recover the mean profit the Law requires an entry, if I.S. dye, which is the act of God, by which his entry is taken away, he shall mayntain an action of trespassse without entry, and recover the mean profits. Lessee Covenant to leave a wood in such plight as it was in time of the lease, it is subverted by tempest, he is excused of his Covenant. The *same Law* is of *impossibility*, as if it be impossible to gain actuall seisin, in such case tenancy by the courtesie shall be without it, as in case of Rent and Advowson, and the wife dye before the rent day, &c. *Exception out of* this rule is, if the act of God is not so meerly, but the folly of the party intermixed, as where after battle joined, one of the parties becomes blind by his own fol-

38 H.6.28.

1 Report.98.

2 H.3.

22 Aff. 93.

4 H. 6. 3.

32 Eliz.

1 Report Case
Archer.

ly it shall not excuse him which otherwise would. A River changeth his course and runs upon my ground, the common road shall be upon this as formerly, because it is not meerly the act of God, but my negligence. In like manner, the rule of Impossibility fails where it was known to me before, and therefore if I am bound to go to *Rome* and return in one day the bonds good. So if the matter was not meerly impossible, as if I. S. assume to carry goods safe by water, and they are overthrowne by tempest, this shall not excuse him because he might have carried them another way, &c. but if the carriage was to be by Sea otherwise it had been. Lastly, impossibility shall not excuse where no person is in being at the time to receive hurt by the impossibility, as tenant for life is the remainder to the right heires of I. S. Tenant for life is disseised, and disseisor levies a fine at the Common Law, I. S. dyes, his right heire shall be bound, &c. though it was impossible he should make claime, or entry for to avoid it, &c.

2 *Act of a Court shall prejudice no man & contra.* In assize a verdict is given for the Plantiffe and at this time Corne was grow-

growing upon the land, the assize is adjourned into the Common Place and before judgment given the corne is severed and taken away, he which recovered shall lose the Corne by this adjournment. A man ought to have the priviledge of the Chancery, as servant, the Court advises upon it, and in the mean time the master is discharged of his office, yet the servant shall have his priviledge. The Court enlargeth him that is in execution contrary to the Law, its said the party is without remedy, *utlagarie* after judgment is pardoned by the Chancellor, the debt not satisfied which is a wrong, Its left doubtfull whether the party can have any remedy, yet for the most part the party shall not be prejudiced, as if the Court advise upon a protection and before the day, in Bench the protection is repealed, or a Writ of Errour cast in upon the first Record, upon which this in question depends, yet the Court will give judgment. After Counsaunce of plea prayed, the Court gives a continuance, this shall not hinder the party to have Counsaunce of plea. See *Institutes* 3. title *Appeal*.

3 Who shall do the first Act, where it is

41 E.3.19.

35 H.6.3.

2 E.4.8.

2 Eliz. Dyer
172.

10 H.6.6.

35 H.6.54.

14 H.8.18.

doubtfull. Hee that shall have advantage by it shall do it, the condition of a bond is if the obligor resigne his Benefice for a pension to be granted to him as they can agree, then the bond to be void. It is not sufficient to agree of the pension, but the obligee shall render a deed for the assuring of it to the obligor. So where a Covenant is to assure the Mannor of D. to I. S. before *Michael.* next, as Counsell shall advise the Counsell of I. S. shall give the advise, and also tender the assurance. Note where the thing is certain to be done, hee which is bound in assumpsit, or a bond shall do it to to save an action, and damage to be recovered against him. Assumpsit to make a feoffment to I. S. is, and an action is brought without request or tender of any deed of feoffment, and well mayntainable because the other may make it without deed and request is not agreed upon.

Condition of a bond is that the obligee shall bring three ells of cloth to the shop of the obligor which shall be measured, the obligor shall do it to save his bond, *aliter est*, if the obligor is the tailor. An obligation is to build a house, as I. S. shal devise the obligor ought to procure this advise to save his bond

Old book en-
tries, 5.

E. 3. Car. per
Noy. in Casu
& Brown
Stroude.

4 *Act implicit where not sufficient but shall be explicit.* Two Garnishers are in a reall action, and a stranger in their presence doth speak the words of garnishment, this is not sufficient, but they in proper person ought to do it themselves. 43 E.3.32.

5 *Act of an Enemy shall turn to my benefit.* As where severall *Nisi prius* are sued by the Plantiffe & Defendant by proviso, and they have severall *Habeas Corpora*, the Plaintiffe faile in *Jurat a Contrinuanda*, but the Defendant doth continue it, the Plantiffe shall take avail by it, as if he himself had done it. 4 Eliz. Dyer 217.

6 *Act subsequent shall be guided by agreement precedent.* I. S. pays a hundred pounds at the day in the condition limited, if agreement was before that hee should have part of that hundred pound againe, this is no performance of the condition. *Institutes* 1. 109.
A. brings goods into the Market to sell and there was an agreement before out of the Market for these same goods, if I. S. had the true property of these, no property is altered by this sale. *1 Mar. Dyer 99*
Sic è converso.
Act precedent by act subsequent, as where the Lord distreins his tenant, and after kills the distresse, this in Law is a Declaration

12 E. 4. 8.

of his intent from the beginning ; and makes him a trespasser. Land descends to two daughters , the eldest enters into the whole , and makes a feoffment with Warranty, this declares the generall entre to be for herself, and not for them both, and consequently it is no Warranty by disseisin.

9 Report Case
Dowman.

7 *Act imperfect of the part of the one party shall be so of both.* As a woman with-

Institutes I. 79

in the age of 12 yeers is married to a man of above 14 yeers, in this case though hee may consent to marriage, yet because shee cannot , he is at liberty to disagree to this marriage as well as the woman.

P 42 Eliz.
Case Costerd.

8 *Act executed where it shall be defensible and contrary.* The husband and wife joyn in a Lease of the Lands of the wife, or grant her goods , and after they are divorced this shall stand. So when an Administrator doth necessary acts, and then the Executor proves the Will , yet those acts shall stand firme ; so where a Parson makes a Lease , and after is deprived because a Layman, the Lease shall stand.

Institute 1.
138. & Kell.
126.

9 *One Act may inure to two intents.* The tenant infefts the Lord and a stranger, and makes livery to the stranger , in name of both the Lord enters and distreins, this

3 Report Case
B. & Bac.

is a disagreement to the feoffment, and a
 devesting of the Freehold. Tenant for life
 impleaded, prayeth in ayde of the Grantee ^{38 H.6.37.}
 of the Reversion. this shall amount to an
 Attournament. Lessee Surrenders to the
 Grantee of the Reversion, this amounts
 also to an Atourment. A Parson demiseth ^{12 H.7.15.}
 to his Patron who assigns this over to I. ^{Pl. 87.}
 S. this is a good grant of the tearme, and ^{5 Report 15.}
 also a Confirmation, the same Indenture ^{6 Report Case}
 may revoke the old uses, and declare new ^{Fitzwilliams.}
 uses.

10 *Actori incumbit onus.* A partition is
 sued of the Mannor of D. one defendant
 alledges that part of the land was purcha- ^{Dyer 266.}
 sed, & is not parcel of the Mannor, he ought
 shew the certainty of that parcell, other-
 wise the Jury are not bound to find it, if
 they do that, *est veresimile.*

11 *An Act to himself, a man may doe* ^{11 H.7.4.}
and contrary. A Sheriffe is Plantiffe, hee ^{Institutes 2.}
 may take pledges to himselfe, and hee may ^{139.}
 execute a *Replevin* against himself as I. S. ^{14 H.6.2.}
 tenant in tayle, vouch himselfe to save the ^{5 H.7.2.}
 tayle, hee may have Proceffe against him-
 selfe. The Sheriffe is in seisin of a Bayli- ^{8 E.3.21.}
 wick, of a Liberty by seisure, he himselfe
 as Sheriffe shall command himself as Bay-

F.n.b. 4.e.

10 E.2.ff.
Triall 100.Michel 14. &
15 Eliz. Case,
Vic. Norwich.

20 E.4.7.

9 E.4.33.

Trin.43.
Eliz.Case.
Sir Thomas
Gerrerd.

ly of that Liberty, to execute that Proceſſe. There is a Writ in the Register directed to the Sheriff, to inhibit himſelf, that hee proceed not in a Writ of right, a Biſhop is defendand in a Writ of Dower, he himſelf ſhall certifie the loyalty of the marriage in his own Caſe. The old books differ whether a Sheriff may ſummon himſelf or no, but later authorities have reſolved it, that he cannot, but where two Sheriffs are, the one may ſummon the other, but then note a ſpeciall mention ſhall be of that in the Writ, and direction that the other ſhall ſummon him. It is holden, the Sheriff who is demandant may execute all proceſſe till it come at the *Venire facias*, otherwiſe where he is tenant. The Archb. of Canterbury is made executor to one, who hath *bona notabilia*, if he wil reſuſe the executorſhip hee ſhall make this before his Commiſſary and not by himſelfe; a Sheriffe is conuſee of a ſtatute, he cannot execute a Liberate himſelfe. It is doubted whether a ſteward may admit himſelf to a Copyhold or no. See more of this title, 14 H.8.31. *Plo.caſu*, *Plat. vicesimo primo* 6.16. *Coke Jurisdiction of Court*. 105.

12 Where part of an Act cannot be performed

formed, yet the rest shall. The condition of a bond is that I. S. shall be assured at *Michael*. of the Remynder of the Mannour of D. after the death of I. S. and that H. shall be present at this assurance, H. dyes before *Michael*. yet the assurance shall be made, the same Law is if the words were that R. himself should be present, though he comes not then and there, yet the assurance shall not stay of that, because his presence is not necessary, For the Remynder may be limited to him absent. 40 E. 3. 12. Case 10. de Peche.

13 *One shall not have benefit of his own Act, prejudice he may.* A man is ut- 6 E. 4. 4. lage of felony, or condemned in debt, execution shall be done notwithstanding. And this holds against the King himselfe. Q. *Mary* who had an estate *dum sola fuerit*, 5 Mar. Dyer, granted a Rent, the Reversion discends to her, and then shee marries, it seems shee shall not avoid this Rent by her marriage, *contra est aliquando*, by the folly of another, as one enters a bond to A. that he and A. shall stand to the arbitrement of I. S. or that A. shall take a Feoffment of him. A. 33 H. 6. ff. refuses, he himself shall take the forfeiture barr. 165. of this bond for the folly of the other to undertake this. If one that hath Collation

F. n. b.
35 E. 2.

44 Aff. 35.

to a Benefice, do present to it hee hath lost his Collation, and subjected the Church to a lapse, &c. so if a Parson impropriate present to the Church, it makes it disappropriate. A Lord holds land for the value of the mariage by two yeeres, and the tenant enters before all is levied, the Lord shall recover the whole value. An heire who held by homage and fealty takes his land of the King upon office found, that hee held by forty pound *per annum*, he shall be bound all his life time to pay that Rent so prejudiced by his act.

44 E. 3. 4.

44 E. 3. 13.

33 H. 6. 26. *per*
Prisot.

21 H. 4. 2.

14 *One shall be punished for the Act of another.* A disseisor ceaseeth, the disseisee enters, he shall be charged in a *Cessavit*. Accompt is brought against two, the one enters into the accompt, and it is found against him, it shall bind both: One is imprisoned in the Marshalls, a stranger breaks the prison, the Marshall shall be charged for the whole debt. I have a way over the lands of twenty men, one of them stopsthe way in his land, I shall have an action against all those over whose lands the way was. A rate is put upon a towne for the fees of a Knight of the Parliament, the beasts of him hath payd his part, are

taken for the residue, hee shall not have a replevin, but the beasts shall be sold to pay this dutie.

15 *One shall not defeat his own Act :*
& è contra. Lessee for years grants the next
 avoydance, and then surrenders, this shall
 not destroy his own grant. A grant com-
 mon to B. for a horse, and after grant a
 Rent charge, the horse of B. shall not be
 distrained. *Brook* the chiefe Justice did
 put out an Officer which he himselfe had
 admitted before : And so an Ordinary
 may admit the same partie able, whom
 he hath returned disable before.

8 Report Case
Davenport.

20 H.7.10.
 5 Mar. Dyer
 151.

16 *Agens & consentiens pari poena
 plectuntur.* If one takes a horse by wrong,
 by my consent, trespasse lies against mee,
 A. mayme, B. by assent of C. appeal lies
 against A. and C. and damages equally a-
 gainst both, otherwise it is where interest
 is to be bound, as Dean and Chapter, sei-
 sed in *smul*, the Dean lease the Land
 with consent of the Chapter : This is not
 good.

43 E.3.43.

22 Aff.82.

Dyer 40.

17 *A Possesse adesse non est bona argu-
 mentatio, sic à non esse ad non posse.* A de-
 vise is of Land in fee, so of goods, if the
 Devisee dye before the Devisor his heire,

Plo. 345.
Case Brett.

18 E. 4. 5.

8 E. 3. 64.

nor Executor shall gaine any thing by this Will. A. is indebted to B. 200 pound, and delivers goods to him to sell, *meliori modo quo poterit*, to pay himselve hee is proffered 200 pound for the goods, and refuses it, and after hee sels them for 12 pence, A. shall answer the residue of the debt notwithstanding this proffer and possibility was, &c. Lands have never been departed betwixt males, therefore cannot be is a *non sequitur*.

5 Report Case
Broughton.

18 E. 4. 28.
30 Aff. 5.

6 Report, Sir
Anthony Mild-
maie Case.

18 *A posse ad esse bona fit argumentatio*. Condition of a bond is to save harmlesse without damage, if he may be damified, though he is not *in facto*, the condition is broken. If an Escheter may seile goods for a forfeiture, it is all one as if hee did, when he will he may. A husband hath a terme in the right of his wife, and is a debtor to the King though hee dye, this term shall be charged to the King, the same law of one joynt tenant-debtor. Tenant in tayle, because it is in his power to dock the remainder upon this, the law takes this as done, and for this reason puts no value upon it, as Affets to an heire, &c.

19 *A non posse ad non esse bona est argumentatio*. The condition is, if a rent is
be-

behind and no distresse, he may re-enter, he demands at the day, and the doore is shut against him, albeit a distresse is in the house, because hee cannot come to it, the condition is broken as if no distresse were there, see if request shall be to open the doore. Pasch. 23. Eliz.

20 *Act me invito fait nest mon act.* I chase Deer out of my land with a dog, and after I recall the dog, but hee notwithstanding pursues him and kils him within the liberty, I shall not be punished for this within the statute. An assize of Common is brought and hanging this the Plaintiffs cattle escape thither, this shall not abate his Action. 43 E. 3. 8. F. n. b. 180. 33 Aff. 9.

21 *Argumentum à minori ad majus tenet affirmative.* Upon this reason a Proviso in the statute of ordinaries extends to the High Commission, which is above them, and the contrary is also true, as a statute which speaks of Deanes doth not extend to Bishops. So the Statute of 8 H. 6. which speaks of Clerks raising Records, a Judge is not within it. So in Institution of Treasons this argument doth not hold the lesse is made treason. Ergo the greater, &c. 5 Report Case Cowdry. 3. 72. & 20.

36 H.8. Dyer.

60.

8 E.4.19.

13 E.4.9.

Lynius 35.

Plo.322.

31 E.4.47.

22 *Bonum publicum privato preferendum.* Upon this reason a man may dig in my soyle to make Bulwarks against enemies of the King. So fishers in the sea may come upon my land, &c. Its lawfull to break a doore to finde a Felon if felony is done. Upon this reason the Civillians say, *Sipiscator ligat navem ad arborem dominus arboris eam incidere non potest*: upon this reason it was that the King might cut my trees for repayre of his Castles before *Magna Charta*. And if the King grant to a County or Hundred, that they shal not be Jurors in Enquests, it is void, because publique prejudiced.

Plo.292.

Case Chapman.

23 *Causa qualis tale Causatum.* I covenant with one, & his executors make a lease of B. Acre before *Michael*. and the Covenantee dyes before *Michael*, and I make the Lease to his Executor, this Lease shall be in the same degree as the Covenant was, and so shall be to the use of the testator, and Affets in the Executor, the same Law is if an Executor have a villaine who purchaseth land, hee shall have this as he held the villaine, &c. *fallit regula*, In case assise is brought joynly against father and his daughter, and the father sayes
he

he is villein to I. S. howbeit shee is of the 10 Aff. 7.
like quality, yet this plea shall not be ma-
teriall to her.

24 *Causatum non excedit suam cau-
sam.* Tenant for years grants a Rent for
life of the Grantee. He shall not have free-
hold in this Rent, but if he die within the
terme, the Rent shall cease, and shall be as
if granted for so many years as the Gran- Plo. 524.
tor hath, if the Grantee so long live, 15 E. 4. 8.
but see *ibid.* that for necessity of reason, Plo. 555.
and by fiction in Law, it may be other-
wise.

25 *Causans damnum equalis faci-
enti.* If one breake down a gap in my
hedge, by which beasts escape into my 9 E. 4. 4.
Close, from the Common adjoyning, now
the trespassse which at the first was onely
4. d. may bee 20. lib. by the insuing da-
mage. Two combat, and the one kils the Stamford 17.
other, & this was by reason of the words
of a woman; shee was arraigned for this
felonie. Trespassse for burning the Plan-
tiffs house, & declares that it was burnt by 48 E. 3. 25.
negligence of the defendant and holden, a
good count to maintain their writ. If the
partie shews other goods then he ought to
do in a Replevin, or in a *Cap. sa.* shews a 11 H. 4. 91.
wrong man

man to the Officer, he shall be charged in trespassse, and false imprisonment, and so shall the other too. Sometime the Law more punishes the causor then the actor of an injury as a *Capias* issueth where it ought not, he that took it out shall be punished, but the sheriffe excused.

Michel. 23.
H. 7. Kell. Pla.

5.

26 *Conjunctive, and collective, words taken seorsim and discretive.* Three men submit themselves to arbitrement of all matters betwixt them and A, this shall be not onely of matters they have joyntly against A, but what either of them hath against him. An estate is limited to two. & if they die without issue, the remainder to another in this case, upon the death of either of them, the estate as to his part shall go to the remainder man. Severall

2 R. 3. 18.

16 Eliz. Dyer
Cale. Clatches.

No. lib. d' En-
tries 115.

19 H. 6. 6.

11 H. 7. 6.

demises and rents are in one Indenture of lease and lessee Covenants, to pay *reditum predictum*, this Covenant extends to all the severall rents: Two grant *omnia bona*, so A. releascs to B. and C. all actions, this extends to their severall goods and actions, as well as joynt. Three severall men make three severall Covenants, and in conclusion of the Indenture one is bound to performe the Covenants made be-

be-

betwixt A. I. and S. This doth extend to the Covenants *separatim*. *A scire facias* is against the successor of a Prior of D. 17 E. 4. 21 and shews a recovery against his predecessor and part behinde in his owne time. *Et quod non redierunt*, &c. and this ruled good. See *Dyer* 150,

26 *Causa cessante cessat effectus*. If the offence is pardoned, for which the Sheriffe ought to be amerced, no amercement shall be. The husband and wife lease by deed, he dyes shee accepts the rent, if the Lessee lose the Deed of lease, she shall avoid the lease, for this was the sole cause she was estopped, &c. The Feoffor shall have and hold the Charter of the land against the Feoffee, by reason of the Warranty, but if this determine he shall hold them no longer, but note it is cause executory is intended, as Annuity granted *pro consilio*. I grant to I. S. that I will clayme nothing in the Mannour D. of which the Grantee is seised, and for this he grants me an Annuity in this Case the entry of the Grantee wil not cause the annuity to cease, and see *ibid*. A good Case of an Advowson granted for an annuity. And note it is not in the power of the Grantor to cease his own grant,

37 H. 6. 21.
5 Report Case
Vaughan.

36 H. 6. 24.

15 E. 4. 17.

1 Report 21
4 Report,
Case *Alton*.

15 E. 4. 3.

24 E. 3. 53.
4 Abbot and
Lewes Case.

grant, as if hee will say to the Grantee hee will not have his Counsell, the Annuity shall continue, though *Richel* in 7 H.4.16 thought otherwise. A man grants to make a new pale for the old one, if hee cannot have the old one, he is discharged to make a new one, yet in *Pigots* case, if he can have an Action for the old pale, he is bound to make the new one. Note another difference, where the Office determines for which the Annuity was granted, that shall cease also. see 12 Aff.41.20 Aff.27 E.4.10 49 E.3.45. 1 H.4.ultimo. Note another difference. It must be *causa* not *circumstantia*, which causes this Cesser, and therefore where Covenant is to make Divine Service in the house of the Grantee every Sabboath day, though the Grantee depart with the house, yet the service shall be done. But if the cause cease but in part, the whole Annuity shall be lost. The King grants the office of a Keeper to two, and the one fails in discharge of his duty, the the whole fee shall determine. So if Annuity is for Counsell to two, and the one refuse, *fallit hac regula*, as where a Guardian in Chivalry hath the body in ward, and there be other lands in Soccage, the next of kin shall not have this land in

15. E.43.
5 E.4. &

Plo.381.

6 H.41.

Plo. Case.
Nevill.

Ward, though the body of the Ward is to Plo. Case,
 another (which is the cause) but the next *Carrell*,
 of kin to whom it cannot discend shall
 have it. Arbitrement is to pay ten pounds
 for fixe yeeres, to educate B. B. dyes,
 yet the payment shall continue during *Dyer 329*
 the terme, Proceffe agard to the Coro-
 ner for Cosnage to the Sheriffe, who
 after becomes out of office, and another
 put in, yet the Proceffe shall continue to the *14 H. 731*
 Coroners. *Vide* more of this matter and *18 E. 4. 3*
title, 4 Mar. Dyer 141. Kell. 124. Davis
Reports 3. and Case Lutterell 4 Report.

27 *Coliquintida parum totum Jus vi-*
riat. A suit is in the spirituall Court for
 Dwood, tithable, if any part is free from
 tithes, a prohibition lyes for the whole: if
 for part of the action, though the lesse part, *11 H. 482*
 jurisdiction ought not to be to the Court
 where it is begun. It shall be outed for all.

A bond is made upon a usurious contract
 for part, all shall be avoyded. If my Coun- *In 33 Eliz.*
 sell labour jurors, hee is a mayntainer *ab Case Paramor*
initio, even for his Counsell. Husband and *Robinson.*
 and wife do vary in the declaration of uses *22 H. 6. 6.*

For the particular estate as for life, and con-
 cur, as to the fee it is void for all. *Divers 2 Report Case*
 Covenants in an Indenture are void, be- *Beckwith*

1 Report. 82.
Cal. Colshill.

2 Report 113.

cause it is concerning a grant of an office contrary to the statute 5 E. 6. and one Covenant therein is good yet the bond to performe Covenants is void for all. Superstitious use intermixed infects all the good, so covine.

9 Report Case
Benlofe.

9 H. 7. 19.

28 *A Conjunctis ad devisam ale arguitur*, as the Ordinary may take a refusall by all the executors, *Ergo*, of any is false. One is heire to husband and wife, *Ergo*, to the husband is a *non sequitur*.

44 E. 4. 21.

4 Report Case
Digbie.

29 *Conjunctorum utrumque oportet esse verum*, and performed, as where the condition of a bond is double, so the consideration of assumpsit both shal be performed. A license *recipere & retinere*, both shal be done, lease is & bond to pay 10 li. rent if no restreint be of sowing & making woad, and after a Proclamation is to prohibit sowing of Woad, he shall pay his rent in this case. Rent is granted out of land in the tenure and occupation of I. S. though he had it all in Lease, if hee have it not in occupation, the land is not charged.

T. 32. f. liz.

Rot. 431. Case
Sherrwood.

11 H. 447.

32 his 14.

7 E. 3. 65.

30 *Dammum asque injuria, is not punishable*. As if a Schoole-master erect a new Schoole to the hurt of the former Master; so if a new Mill is set up to the pre-

prejudice of the ancient one, to which all within the Town resorted before no action lies, so where arable is laid down to pasture, by which my ancient pastures give not such a rate as formerly, or agistment not so much. 31 *Sic è converso injuria absque damno is not actiona-*

ble. A man is affied to a woman, and when the banns are published in the Church, another forbids them, saying, that hee hath another wife, which is false, this is *Injuria absque damno*, because he may compell her to marry him being affied. I may enter into your close, and put out Savages, or your own cattle out of your corne, which have escaped in by your own fence.

Trin. 5. Car.
Case Ap-John.

Michel. 12.
H. 7. Kell. 2.

32 *Deus & natura ferenda.* If the water change his course, and run upon my Land, the common road shall be there as before.

22 Aff. 93.

33 *Dictum partis, is not exclusive taciti dicti legit,* Lessor Covenant Lessee shall have fewell by his assignement, he may take it without assignement. A rent is granted to distrein for this by the Bailly of the King, yet he may without him.

Dyer 19.
44 E. 3. 18.
40 E. 3. 10.

34 *Disjunctorum sufficit alterum*

10 Report 59
Case *Evesque-*
Sarum.

esse verum. It is pleaded the Bishop & his predecessors have used to grant such an office, *Tali persone, sine personis* as he pleaseth; this is no affirmation that hee had granted it to more then one, so that issue can be taken upon that, but the plea is true, if he had granted it to one onely.

7 E. 4. 15.
5 Report
Case, Com.
Rutland.

15 H. 7. 10.

21 H. 6. 33.
6 Report Case
Blake.
8 H. 7. 33.

35 *Distructio facti, shall be eodem modo quo creatio.* A specialty must be avoyded by deed, an use declared by Indenture shall not be altered but by indenture, yea, though but in abatement as rescit of parcell upon a deed shall, not bee admitted without deed of it, otherwise it is where matter of fact intervenes, as in covenant before he can have an action: so in case of a rent because of distresse is to be payment is a good plea without deed, and so is it there, though he bring a Writ of Annuity, *quod nota.* A man is bonnd he shall not occupy my land in D, I after let it unto him, this is not to purpose to save his bond without writing: and yet matter in fact wil aid an imperfect writing to make it good, as where an Acquittance was pleaded to a bond, and upon sight of it, it rehereses it was money due upon Purchase of Land now by an Averment that
this

this bond was taken after the money due 3 H.7.14.
for the purchase, and agree in the summe,
by this the Acquittance is helpt.

36 *Dictum partis*, which is no more
then *dictum Legis* operates nothing at all.
Lease is for life, and the Lessor grants the
Rent to A. for life, in whose hands so ere 26 Aff.38.
the Land shall come, this is no more then
for the life of the Lessor. A gift is to two
of land, and *unorum duntius, viventi*,
they make partition and the one dyes, the
survivor shall not have his part by these
words, and *unorum, &c.* which is no
more then the law would have said. A
bond is to do such an Act (if the law per- 30 Aff.8.
mit) its all one, as if it had been to doe it
absolutely: see 9 Report, *Flowers Case*. 4
Report *Case Burrow*. 2 H.7.9. *aliter ca-*
su. As a man charges his executor to pay 12 H.3.6.
his debts, by his Will by these words, the
debtor may sue a man in Court Christian,
quod quere, by the allower of this book.
A bond to infeoffe A. if be please, though
the law says as much that he cannot be in-
feoffed against his will, yet it hath this o-
peration, to alter the law in this, that the
obligor is not bound to make this feoff-
ment till A, signifie his minde, &c. The

Statute 21 H.8. says, that he who takes a second Benefice, the first shall be void, which the Ecclesiasticall law said before, yet this operation is by this expresse saying of that Act, that it shall be void without notice, where value is above eight pounds.

Vide 17 E.3.7. Dyer 46. & 264. Perkins 105.

38 *Dominus & Servus, Judge and Minister, Subject and Sovereigne, Idem non erit, so Judge and party.* A woman is Guardian of the Fleet, and takes one of the prisoners to husband, this is an escape. If one hath a Benefice and is made Bishop of the said Diocesse, the Benefice is void. He which is Justice of the Peace is made Sheriffe, the Patent of Justice determines. A man hath an Annuity for service to the Prince of *Wales*, he is made King, the service shall cease he is no longer Prince. Remembrancer is made Baron of the Exchequer, this causes this Office to cease. So one shal not be Judge of the Kings Bench and Common Pleas. *Persey arraigned an assise*, with other Plantiffes, and after hee was joyned in Commission of assise, and ruled that no proceeding can be upon this Commission. A Charter to hold, Plea,

Plo. Plats case

3 E.3.

Plo. Sir Tho.

Wroths Case.

3 Eliz. Dyer

197.

35 Aff.3.

Plea, *licet ipsemet sit pars, &c.* Is not good if there be not words to make another Judge when such a Case happens. A Constable may apprehend him that breaks the peace upon himself, but that is because it is an offence to the Crowne more then to himselfe. 8 H. 6. 20.
5 H. 7. 6.

Sheriffe is Judge in redisseisin yet hee himselfe returnes the pannell, so Judge and Minister, but the reason is, because he is made Judge by statute, not as the Sheriffe, but a person described by this name. Kell. 85.

By the Civill Law a Judge may punish an injury to himselfe by imprisonment or mulct, *Sed si pars verberibus aut capite mulctanda est propter injurie atrocitatem abstinendum est.* A Writ of Error in the Exchequer is directed to the Treasurer and Barons, commanding them to have the Record before the Treasurer and Chancellor, and good. Boden 309.
Institutes 4.
105.

38 *Dignior dat nomen rei, & regulabit eam.* A grant is of the Office of the Kings Tennis Court, &c. The play of the Household is included, and that onely gives the name. Where speech is of I. S. it shall be taken the father and not the son. Where speech is of a Will, it shall be intended the 8 Report Case
John Webb.

Dyer 314.

the last Will where more Wils are, &c.

10 E.3.26.

40 *Duty once discharged is alwayes discharged.* The Ordinary once refuses a Clerke for insufficiency, he is not bound to take a second examination of him.

44 Aff.6.

41 *De non existentibus & aliter existentibus, quam lex vult eadem ratio.* If a Record is removed into a Court, but not by due processe and course of law, its all one as not removed.

§ Report
Case Frost.

16 H.7.16.

42 *Equipollentia habent eundem in lege vigorem.* A Writ comes to the Sheriffe to arrest A. which was in his custody before, and upon the escape of him an action upon the Case is brought, and declares that hee was arrested, &c. & *bene.* A Writ is to the Sheriffe, and hee returns that *virtute precepti*, he hath done so and so, and bene and equipoll, *virtute brevis*, &c. In a Writ it is said, *quam clamat esse, jus*, this equipoll fee-simple, and therefore if in the following part of the Writ he instance in a lesser estate, as *ex dono* for life, or, &c. The Writ shall abate, *Vide Plo.* 542 555. *Dyer* 171.203. 17 E.31. But note this exception to this generall rule, that words of art shall not be supplied by equipollent words, as voluntarie, & *ex mali-*

39 H.6.58.

tia praecogitata interfecit, is not sufficient in Indictment of murder, but the word *murderavit*, must be. A Writ against M. late wife of *Thomas Com.* A is all one as if he had called her Countesse of *Arundell*. 9 Eliz. 161. 2 H. 6. 11.

43 *Eadem ratio, Idem ius.* So *Bracton de similibus à similia eadem ratione procedendum.* The stat. which outs *non clayme in fines*, by reason of wars, takes away also *non clayme* in a Writ of right, for the same reason is, &c. Plo. 59. & 160

44 *Expressum & particulare facit cessare tacitum & generale.* In this notion its said a deed is a private law amongst parties to it. By the word demise assignee of a lessee for yeers shall have an action of covenant if he is disturbed, but if there is an expresse covenant in the deed, that the lessee shall enjoy the house demised, &c. without eviction of the lessor, this shall restreine the covenant to the lessee himselfe. An Abbot brings trespassse against the Parson of C, and declares of cutting trees, *ad deteriorationem Ecclesie praedictae*, though every Abbey is a Church, yet because it is not named before, this refers to the Parson which was named, and so makes 28 H. 8. 15. 4 Report Nokes Case. 18 E. 2. ff. 6 Report 828.

Hill in Tac. c. 9.
Casu Porriman
by Bridgman.

Ibid.

21 H. 6. 14.
Perkins 660.
6 Report Case
Sir Anthony
Mildmay.
2 E. 4. 5.

7 Report
Case Nokes.

5 Redort case
23 Broughton.

5 Report
Cap. Vernon.

makes the Writ insensible & abate. A man devises land to his eldest son, the remainder to his yonger son, the remainder *proximo de sanguine* of the devisor, the eldest shall not take by these generall words, but any other not named before. A. hath two messuages, and demises that in D. and all his land in S. to I. S, the messuages in S. shall not passe. *Exception.* Note, where that the expresse is against the nature of the estate, as a gift in tayle, and an expresse clause is, he shall not do waste, or suffer a recovery, or that he shall hold of the Lord Paramount, these shall not crosse the implicit *dictum legis*, in those severall particulars, and it is also in things inseparable. As Warranty by dedi is not destroyed by expresse Warrantie. *Sic regula fallit in casu*, the thing is inherent to the estate, as covenant expresse is the lessee and his executors shall repaire the house demised, &c. This shall not excuse the assignee who by implied covenant in law adherent to his estate, is tyed to repaires, *except also* in case of matter of record this, though implicit will controll the expresse act *in facto*, as a woman enters into her joynture, & then brings a writ of Dower.

So

So where the expresse act is *vaine* it shall have no such operation. See *Dyer* 376. *Kell.* 123. *Doctor and Student* 94. And so it is also where the expresse act or word is additionall, and not contradictory of the first, as a devise is to pay ten pound rent to *A.* and if it is behinde six weeks, &c. that *A.* may distreine, this shall not avoid the entry upon the condition if broken, but it is variety of security for this rent. So where that which is but secret is dehors, there both may stand without the one outing the other, as bloud may be averred to have beene the consideration to rayse an use mentioned in an Indenture, though money only expressed within the deed.

18 Eliz.
Dyer 348.

1 Report Case
Mildmay.

46 *Exceptio firmat Regulam, concessionem, &c.* A man holds by homage, cſcuage and rent, the Lord grants the rent *cum pertinentiis*, the *Seigniorie* doth not passe by this grant, but if he had said (excepting reliefe and escheate, it is doubted. Common is granted for all cattle excepting hogs, this exception enlarges this to goats, &c. A man grants all his trees excepting payr-trees, apple-trees, now passe, which otherwise would not. The statute of

29 Aff. 10.
23 Incidents
24.

14 H.8.1.
2 .2.R.2.

H.6.

22 Eliz. Case
Tastley.
11 Report 74.

Michael. 7.
Car. in b. Roy.
Information.

H. 6. speaks only of Sheriffs, yet because in the end of the statute there is an exception of Guardian of the Fleet. It is holden all other Guardians are included as well as Sheriffs. But note, *fallit hac regula*, where the exception is idle. And therefore though the statute 5 E. 6. hath an exception that ingrossing of salt shall not be within that statute, any ingrossing of victuals, yet, *non sequitur*, it is victuall within any statute, for it is *condimentum* onely. And such clauses are put in to satisfie ignorant Burgeses; rather then for necessity, so in the statute 43 Eliz. cap. 1. there is an exception in that statute, which provides against alienations to the King, in case of Ecclesiasticall persons it follows not, therefore that other persons upon whom a disability was by law before to alien as infants mad men, &c. May now give away their estates, because Ecclesiasticks are onely excepted.

Dyer 340.
Institutes 177.
7 Report 27.

47 *Ætymologia verborum non præbet firmum argumentum*. And therefore to argue from the word joynture of a woman, that therefore it must be a joynt estate with her husband is a fallacy, for its a good joynture though the estate be to her

her selfe sole, yet such arguments exhibits ornament in the discourse, where it is agreeing with the law.

48 *Exitus acta probat.* The copying out of a Libell proves as evidence that he did publish it. The tenant is distreined without the mesnes fault, yet if hee after does not what the law requires, as putting his own beasts into the pownd, for to free the tenants beasts, the distresse shall now be said in his default. See 9 Report, Case Meriell Tressam. And vide, the Case of Estray, and how it shal be demeaned that it prove not tortious. So in those cases of liberty given by law, as to come into a Tavern to drink, and he take away a piece of plate, this shews the act of comming in tortious *ab initio*, &c.

8 Report Case Lamb.

7 E.4.4.

9 Report 11.

8 Report 146.

49 *Expositio verborum.* *Averia* is any live thing as fish, hens, capon, &c. *Aut*, albeit it is a disjunctive adverb, yet in the Kings case it leaves his genuine sense, as where he grants land, &c. *Quæ quidem terra concealata, aut redditus substracta, &c.* If the land is not concealed, though the rent is substracted, and so the disjunctive, *aut*, is performed, yet the land passes not. *A, ab, abs.* *Ab octabis Trin.* is the last

V. lib. entreyes 138.

21 H.6.39.

11 Report 173.

Case Hugh

Vaughan.

21 E. 4. 37.

last day of the foure, *à festo Pasche*, must be ruled by the Canons, *Abathia*. In *Abathia*, this extends onely to the Precincts of the Close of the Abbey, and not to all the possessions of it. *Charge*. A man covenants to free a purchaser of all charges upon the land, this extends to a possibility of a term, which yet is no title or right, *ante hac usitate*, &c. Note in a subjects case these words, Will reach higher then in the Kings Case.

39 Aff. 35.

20 Eliz. Dyer
362. no. lib.
entrety 384.

Circiter. Is an incertaine time, and therefore in case where certainty is required, it is ill in pleadings, &c. and therefore *Circiter* 21 of Feb. may be as well be afore

Pas. 28. Eliz.
Case Farrer.

21 E. 4. 52. lib.
entrys 152.

the day as after. *Citra*, *infra*. *Circa festum*, *sic ante festum*. These are all before the *Vigils* of the Feast, or in the *Vigils* at the least. A bond is made to stand to the arbitrement of I. S. to be made *ante novum diem* of October, &c. The arbitrement is well made any time before mid-

Mich. 13. Eliz.
b. 207. rot.
1330.

9 Eliz. upon
Bendolf.

9 Eliz. per
Gawdy and
Dyer.

night of the 8. day. *Citra*, 50 years last past, was rejected because unusuall, for the pleading is *infra* 50 yeers, &c. Condition of a bond is to pay so much mony by *Michaelmas* next it shall be before the day. *Competent*. as a competent Benefice, the

mea-

meaning of this word is to be found out by the annuity is to cease when such a Benefice is provided, and not in reference to the persons quality to be provided for, as if the annuity was forty shillings *per annum* to the Chaplain of the King, till provided, &c. Of a competent Benefice ten marks *per annum est*, adjudged competent in this case. *Consuetudo*. It is taken for a thing anciently, used albeit now at the present it is discontinued &c.

6 Report Case
Molins.

Discretion comes of *xpius iudico*, so Jurors put themselves in discretion of the Court, that is, upon the judgement of the Court in point of Law, it is taken for that act of the Judge arises in case of extremity of Law, and amounts to as much as if he had said that the Judge shall doe according to the Law and right reason, when it's said in Statutes, &c. that hee shall doe according to his discretion, See 27. H. 8. 25. Fitz James discretion mentioned, see 10. H. 7. 29. where it's taken *pro concilio*.

8 H. 4. 12.
5 Report Case
Rooks.

Donque, then tunc a license is made to goe over sea, proviso if he resort to fugitives, then to cease he breaks the Covenant, then here is expounded, for thence

Vide Plb. 83.

2 Eliz. Dyer
177.
P. 5. Car. Case
Mason.

forth and not *ab initio*, action upon the case, consideration is *quod tunc* he deliver a horse, &c. It's well done any time of the day after.

Plo. 192.
F. n. b. 194.

Demise signifies not onely the originall Lease which is made to the Lessee, but the relinquishment, grant or assignement of any thing, as in the Writ, in the *per*, it is said, *cui A*, this demise in case of fee simple granted.

8 Report Case
Pexall.
Register 125.

Et, This conjunction in our Law, hath somtimes the sence of *vel*, & *sic è converso* horrible and enormous taken for or enormous. A bond is upon condition, if he pay part it shall be void, and also upon condition, that if hee suffer the Obligee to enjoy such a Mannour that the bond shall be void, the performance of either of these causes will avoid the bond, which prove *and* or & is taken in the sence of or, A rent is reserved to the Lessor, or his heirs, this rent is good to himselfe, and or is not disjunctive here. A man devises Land to G. S. and if hee die before 21 yeers of age, or without issue, to remain to a stranger, he dies before 21. but hath issue, adjudge this word *or*, shall be taken for *and*, and both must fail, otherwise he shall

9 Eliz.

5 Report Case
Mallery.

Eliz. 20. Iac. in
b. R. cited. per
Dod. I.

Shall have no benefit of the remainder in this case, See *Plo. Manxels case*, fol. 5. *Bene 4 Report*, *Ognels case*, and *10 Report*, *Vaughans case*, cited in *Legats case*, *Instituti*. 96. *8 Report Pexals Case*.

Expiration, is properly by efflux of time *Plo. 198.* and differs a *fine rei*.

Esteant, or being. I these words will *27 H. 8. 17. 19.* extend to future times, and are not tyed always to the present tense. A man deviseth his land shal go to the next of blood *16 Eliz. Dyer 333.* (*being males*) It shall be construed in the future tense, that shall be males, &c.

Exactionibus, is all things in action, *11 H. 4. 7.* and as large as Demands in a manner.

Est & fuit. Sometimes taken in the same sense, as if mayntenance be layed in a plea, *quod fuit*, betwixt such and such, in law its taken for which is. *8 H. 6. 27. 10 H. 7. 27.*

Eviiction. A man is bound, the obligee shall enjoy such a house, or, &c. without eviiction. Pursuit in Chancery and a decree thereupon, &c. is no such eviiction to forfeit his bond. *5 Report tempore Eliz.*

House. A remaynder is limited to the house. In law the family, and the chiefe and most worthy or eldest of it, is meant. *16 Eliz. Dyer 333.*

Horrible and enormous. *It is unus non*

Register 125.
F.n.b.185.

F.n.b.198.
Institutes 1.
369.

39 H.6.10.
Institute 1.
208.

4 Report Case
Wade,
30 Aff.11.

18 E.4.20.
21 E.4.53.
per Sylward.

dicitur enormous, if mayme, &c. is not by it. *Vide Stat. W. 2. cap. 29.* hath the word.

Incontinenter & immediate, is as much as eodem tempore. And therefore *lit. 702.* says if disseisin be and a scoff made *Incontinenter garr.* created upon that is *garr.* by disseisin. See 6 Report 11, there its expounded by reasonable time. A bond is conditioned to pay plantiffe, and no time limited, the law says it shall be incontinently payed, now this in legall construction is inconvenient time, and so it seems shall it be, though the party himself sayes in expresse words, hee will pay the money incontinently or presently. If no heire be at the time of discent of land, but one is born with in an houre after, this is not presently as to make a discent to take away an entry and yet hee shall have it as heire. A man takes base money in payment and discovers this immediatly, yet he cannot refuse this, having once accepted of it. It is said where a deed is absolute, and a defeasans is delivered immediate, it is good and all one as if it were within the deed it self. Cove is to deliver cloth & that immediatly upon the delivery of such cloth to pay him 10 ponn, the cloth is delivered at noon, the other

other hath all the day remayning to pay the money. Immediatly sometime is by good construction, observing all incidents to such an act, &c. to be done. See *Stat. Winchest. & 27 Eliz.* of immediate notice, and action *Burnel* the same sence *ut hic.* 7 Report
Kens Case.

Infra quatuor Maria. is taken to be within the Realm of *England*, and doth not fetch in or intend *Scotland*, &c.

Inhabitant. Resident, Commorant, Conversant, the genuine sense of these words are very necessary to be known, by reason they are frequently used in severall statutes, as in that of election of *Burgesses* to the Parliament, *1 H. 5. 23. H. 6.* and in the statute of *Rogues*, &c. The originall in the Greek is *οὐδισταρπίζω*, which is, *properantens Commorari, apud aliquem morari*, and in *Buckleys Case, Plo.* the word in the statute *Resident* is in the Record and pleading of it in Latin, translated *Commorans, vel Conversans*, the first comes of *morando*, which signifies dwelling for a time, or to sojourne, and it is rather loytering then habitation. *Conversans* is to haunt much in a place, the originall imports to abide for a time *versari in acie*, and yet note the word

Institutes 1.
107.

word there *Resident* is in the record *Com-
morans* and *Conversans*. The word *Resi-
dent* comes of *resido*, *resideo*, and imports
as much as to light or to sit down as a bird
after her flight, which may aptly be ap-
plied to Rogues, but what time will make
resident is darke yet by these expositions,
but it seemes a small time will do it, in
French its neerer our law lence, *assis lo-
catur idem cum assiduitas*, which inti-
mates that such a one will continue in such
a place for the time to come, then that he
hath been long there before. The conditi-
on of a lease is, that the lessee shall inhabit
and be resident upon the land during the
terme, if these words during the terme
had not been in, it is adjudged that the a-
biding a small time there will serve to per-
forme the condition of abiding and resi-
dent. A man hath his family upon a house
or no family, but occupies lands in Dale,
the first is said a *Resiant*, the second an
Inhabitant in our Law. Suit reall which
was better *royall*, is said due of the body of
a man, because *resiant* there within the
Hundred, and note no certain time is limi-
ted in such case, for if he have been there
three dayes he shall attend. A Charter is
granted

Plo. Case.
Colthirft.

Ibid.

Report Case
Jefferrey.

45 E. 3. 23.

granted that Inhabitants shall have franchises, it shall not be extended to fugitives, as this book saith, &c. See *Fitz-Herbert N.B.* 160. A saith that a man shall not be distreined to come to a leet where he is not demurrant and conversant, if a house is in two Leets, he shall attend that where his bed is, for there hee shall be deemed most conversant. *Vide Fitz.N.B. ibid.* in the Writ for discharging a man to come to a Leet it is, *illi qui moram non fecerint*, shall not be put *in iuratis*, &c. by these reasons and authorities you shall better conceive the right sence of these kinde of words, about which such various opinions have been in Courts of Record and Sessions in the Country, &c.

Institut. 2.122.

In apud ad, de, &c. all these have the same sence in severall cases. Trespasse upon the statute of 6 R.2. for intrusion into the Mannor of *D. apud D*; it is as much as in *D.* and the *venire facias* shall be of the Town of *D.* yet the Indictment was for an affray *apud Ecclesiam de D.* and it was doubted if good, but it should be in *Ecclesia*, otherwise by the word *apud* it may be without the walls, and the statute is penall and the word *in* the Church,

9 E.4.3.

P.36. Eliz.
Capt. Knevit.

&c. A grant of a rent charg *percipiendum* in *Manerio de Dale*, and *apud Manerium* and both good. *Assumpsit* was to deliver goods in such a Port, and in pleading hee says, *ad tale portum*, its sufficient, so where its said such a thing shall be done *in festo*, its as much as the first day of this feast, and shall not be deferred till the *ntas* of it. A Writ is directed *Coronatoribus in Com.* It is as good as *de Com.* And so abjuration pleaded *coram Coronatoribus in Com.* was holden good contrary to the opinion which *ex subito* hath beene taken by some.

10 E. 4. 8.

41 E. 3. 16.

Hill. 33. Eliz.

Keisers case.

21 E. 4. 52.

F. n. b. 245.

Vid. lib. entrys
fol. 1.

Dyer 185.

Interest, any profit as Common, &c. is interest.

34 H. 67. 8.

In manibus, a man devise all his tenements *in manibus suis*, and hath a reversion upon an estate for life, this shall passe for the word denotes onely a thing in my subjection and power.

Dyer 291.

Inde imports all things spoken of before as thus, *Si iudicium iude redditum sit*, &c. this is to be taken upon the whole record, &c.

18 Eliz. Dyer

349.

In rerum natura, hec which is dead in law, as Monk, &c. so he which is out of the Country where, &c. is in law said, not *in rerum natura*.

Ipsa

Ipsa facto. Such a thing shall be, as Stat. E. 3.
 hee which draws a dagger, &c. shall
 be excomenge *ipso facto*, it is doubted Dyer 275.
 if it shall be without sentence or proof,
 but the statute of *Henry* the eighth, which
 sayes, hee that takes a second Bene-
 fice, &c. shall be *ipso facto*, or *ipso iure* 4 Report 79.
privatus of the first, this is without 75.
 sentence.

Juxta. The thing may be twenty foot
 remote from the place to which its said
Juxta. Juxta Hull. This imports the 19 Aff. 6.
 place is another then *Hull*, and remote 14 Aff. 8.
 from it. 45 E. 3. 3.

Infra, is all one with *Ante*. As to pay 21 E. 4. 63.
 money *infra Festum Nativitatis Domini*,
 is before it.

Maereneum. Is this timber which hath
 bin part of a house, or els *aptum ad domum*,
 seems framed for such a purpose, yet see *ib.* Register 94.
 96. It is used for timber in other building.
 In the Dictionaries it is written *mereneum*,
& est idem quod tignus, timber to build
 with. In old French *Maereme* Latin *Ma-* Institute 3. 97.
reneum lignum edificatorium, and its said Institute 4. 307
 a Norman word.

Meniall servant. Is hee which is em- 22 H. 6. 12.
 ployed in the house for to serve the person
 of

of a man. So old book entries, fol, 434. of *servus familiaris* for meniall servant.

F.n.b.197.

Nuper est expound le jour aute le mort de Auntestor quod nota, no long time is required to this.

27 E.3.16.

Pacatione. An old word used for a release, as where its said ten pound was payed in *Pacatione* of a hundred pound, *Vide* old *Magna Charta* 153. the word for payed.

F.n.b.93. no.
entrys 2. &
109.

Prætextu. Is used in law for reall and good matter and of equall force with *virtute cuius*, or *ratione cuius*.

9 Report 56.
21 H.7 38.

Prima & proxima. Where it is said the jurour who hath lands neereft to twenty pound, &c. Is not intended nineteen pound, but the neereft to twenty pound till it descend to forty shillings. I grant one twenty pound at the birth of my first son, and I have a son at the time of this grant hee shall not have the twenty pound till the birth of another son.

12 Eliz. per
Harperum.

Pacificæ. I am bound you shall enjoy acre B. *pacificæ*, &c. albeit hee be distreined for issues lost, this is no breach of this bond.

30 H.8.
Dyer 43.

Pro. The sense of this word is not to have one thing for another, but the thing
it

it self sometimes, as if I promise to content you, *pro granagio*, this is taken that I shall pay the very granage it selfe, and not money for it, &c. Dyer 352.

Forfeiture of all a man may, this in law is land, goods, and body to be imprisoned, when such expression is in a statute, &c. Institutes 391.

Puer. Comprize female as well as male, *maxime* in the Dative case plurall, Dyer 337. 30 Aff. 47. 9 Report 72.

Nos. Vos. Is stylus aulicus, sed non antiquus, and intimates, *quando Princeps loquitur ex curia consilio*, and it is not to be found in all the Scripture given to any Prince or single man, and upon like reason it seems, Bishops used it, and the Chief Justice of the Bench, *coram vobis & sociis*, but because it was given to a Sheriffe in a Writ, thus *præcipite I. S. &c.* the Writ was abated. Parens in Genesis, 272. 29.E.4.44.

Permittere. Imports meer passive, and he that is bound *permittere* onely need do nothing, and violence by him is to have advantage of a condition by which a breach is, will excuse as if the bond is that hee shall not permit A to inhabit in such a house, and the Obligee him put in, &c. he who is so bound becomes a bankrupt, by which Dyer 255. 35 H.6. Fitz barr. 261.

with the house is sold, and another is put in, see whether this breaks the covenant when hee hath done an act by which in law the breach follows, that the other cannot dwell there. *Si lex permittat*, is if by any licence the thing can be done, or dispensation after then it shall be done, &c.

Res is a good word for goods and chattels, and goes to corporate and incorporate things.

Sufficienter, a man is bound to serve in *Normandy*, *Sufficienter*, is with armour, &c.

Sure estate, a man is bound to make a sure estate by force of this word hee shall free it of dower, and yet the estate may be sure without it.

Similiter pro ut, &c. Where Jury findes the homage did *similiter* or *pro ut*, the Defendant hath pleaded, &c. that goes to time and place, and other circumstances as well as to the matter it selfe. *Trin. 33. Eliz. Case, Barnes.*

Predict. This word hath various, effectual operations in our Law, by some books it is said of as great force and efficacie, as if the words themselves to which it refers had been expressed at large. A *Cessavit*

is

12 H. 8. 6.

17 E. 4. 2.

F. n. b. 41.

3 Institut. 182.

15 E. 4. 15.

11 H. 7. 7.

21 Aff. 14.

21 E. 3. 56.

is brought and declares of a tenour by 35 H.6.31.
 homage, Rent, &c. *Et quod de predictis*
serviciis Cessavit, &c. This refers onely
 to that service, of which in Law properly 6 H.7.
 cesser may be. *Predictis* not necessary where
 the matter appears, though it would have
 made it more cleer. It will supply an a-
 verment to reconcile differences in the
 Record as *Codred* is in the beginning of
 the Plea, and after it is *Cotred predict*,
 this helps the varience. An Indenture is
 said, dated 23, *December*, and after it is
 said, *per indentured predict. datum. 23.*
November, the mistake is helped by the
 word *predict*. The quality of a thing
 shall be well helpt by this, and inforced,
 as where it is mentioned that land was
 conveyed which he had by discent from
 his father, mention after, *de terris predi-*
ctis will include all this. I surrenders
 copihold to the use of A. for life, the re-
 mainder to I.S. for life, the remainder to the
 heirs *predicti Johan.* & resolved it shall be
 the heirs of the later I. S. the purchasor,
 and not of himselfe, Assise is' against M.
 the Abbot *de H.* and the pone was pre-
 dicted *Abatissam*, with one more, and the
 opinion that it shall abate, *vid. 8. E. 3.* 16 Aff. 11.
 64. Pa-

10 H.7.5.8.
 Report 57.

Trin. 23. Eliz.
 Case Graye.

Pasch. 23. Eliz.

21 H. 6. 2.

Paratus, paratus, respondere, within the Statute *W. 2. &c.* he shall be said *paratus* who comes at the time appointed by the Law, and not presently, as where a remainder depends upon a remainder for life, here he is in Law said *paratus*, if hee come after the others which are meane and have made default.

Trin. 9. Eliz.
per Dyer.
Walsb & Gam-
dy, I.

In 20 Jac. in b.
Roy case, Scat-
tergood.
22 Jac. Case
Fox.

19 Eliz.

Expositio quorundam verborum & sententiarum in devises of Land. I. S. hath Lands in D. and also Rents, Court-Leets, dismes and common, and doth devise to his eldest Son divers Lands by name, and then devises to his yongest Son all his other Lands purchased free hold and copy-hold, and it was ruled because in the forepart of the will, all his Lands were devised to the eldest, the rents, tithes, leets, &c. shall by those words passe to the youngest son. A man devises all his living to I. S. and and judge his reversion shall passe. *Item*, I will and intend to devise my Land to A, this is a present devise of the Land *per open curia*. A man devises the fee simple of his Land to his wife, and after her decease to his son *Thomas*, &c. shee takes for life the remainder to the son for life, the remainder in fee to the wife, but it is not executed

etuted to make a title, her husband to be Tenant by the courtseie.

Et Cetera, &c. This will help in many cases in Law. In an action of trespassse, *quare bona, &c.* and declare of a bale of wood, and ruled it is not good because in the singular number, and the writ in the plurall, but if this expression, &c. had been added, it would have made it good.

Hill. 13.

H. 1. Keble.

A Recognizance *in atteint* is, that if hee doe such and such things, *quod tunc, &c.*

Dyer.

per, &c. by these particles, the condition of the Recognizance shall be perfected, which otherwise is not. Indictment is certified

up to be *capta*, before such Justices *ad pacem, nec non ad diversas felonias & alia*

malafacta, &c. &c. supplies the other particulars of the commission, but in the

Trin. 11.

Car. b. Roy.

the same case it was ruled, that such an Indictment certified *capta coram, Justicia-*

ris ad pacem, &c. was not good, and doubted if it were certified to be presented

per sacramentum proborum & legalium

hominum, &c. and doth not put down the names of the Grand Jurie if it shall be

good. When a record is sent up in a Writ of errour, out of an inferiour Court, shews the *venire facias* was awarded, *ad recog-*

noscentum,

Trin. 11.
Car. Case.
Hambleton in
b. Roy.
At the Assize
Ebor. 9. Car. by
Davenport
Chiefe Baron.

nosendum, &c. and sufficient without shewing the particular issue, an &c. added to a prescription made it ill, and the plaintiffe *non suted, super inde.*

Commodities, profits, emoluments, these words in a deed added to the land or Manor sold, extend to such things which yield naturall profit, which an advowson doth not, and therefore it was resolved it extends not to an Advow appendant, &c. to passe that without expresse words.

Trin. 18. Jac. in
Comm. b.
Case Loudor.
Vide Chapter
of Southwell.

Sovereigne, In Law it is no more but the supreme of a house, or a Town, &c. So an Abbot is Sovereigne of the house, and *Claydon* the Marshall of the household, is termed there *Sovereigne*, in respect of the Gaoler and the command of such an one obeyed, shall excuse the subject or inferiour. Sovereigne of the Town shall pursue fellows, &c. this is the chiefe officer be it Constable, or &c.

7 E. 3. 24.

28 E. 3. 11.

Register 44.

Britton 19.
W. 2 cap. 40.

Subditus is one who is subject to the ordinary jurisdiction of another, as those under the Diocesan are said *Subditi* in the writ of consultation, and the word is used also for any neighbour or inferiour, within the distresse of such a Court, but in a strict sense it refers to the Prince, so *Boden, subditus*

ditus plurium principum quisque esse non potest. See Dyer 360. Its said that one of Ireland is subject of Ireland, and not of England, *quod nota:* and see *Calvins case*, 7 Report.

Miniments. A word used in Conveyances, it includes all manner of Evidences 35 H.6.37, whatsoever, *quasi Muniments.* Old lib. Entries 335. There it is said forger of false deed and Muniments.

49 *Fictio juris neminem ledere debet.* But ayde much it may, and this is seen in all matters where the Law works by relation and division of an instant, which are fictions in law. A Constable takes 11 H.4.12 one which had struck another, and then sets him at liberty, the party stricken dyes of this stroake, this is felony *ab initio*, but not to the prejudice of the Constable who suffered this escape. A feoffment is upon condition that he shall re-infeoff him, he grants a rent-charge, and the Grantee brings a Writ of annuity, now it is an annuity by relation *ab initio*, betwixt the Grantor and Grantee, but not to defeat 3 Report Case the condition broken, *quoad* the Feoffor. Butler and B. 30 E.3.17. A fine is levied, *sur render* the Conusee by fiction in law hath seisin in an instant to
E make

2 Report Case
Lord *Cram-*
well.

make this renderback good, but to no other purpose to the prejudice of the conusor, for his wife shall have no Dower, nor shall this land be subject to any statute, &c. in which this Conussee was bound.

22 H. 6.
Dyer 33.
33 Eliz.

50 *Fortior est obligatio partis quam legis.* A man is bound by obligation to pay his rent, he ought to seek the Lessor to pay him. A man is bound in a bond to repara a house, hee shall do this against tempest, &c. and so also though it be ruinous at the time of the lease, which otherwise hee is not bound to doe. If the Lessor Covenant the Lessee shall enjoy the land demised pacifice, this extends to those, do interrupt him by wrong, whereby the word demise he is not bound.

Dyer 318.
40 E. 3. 6.

51 *Fortior est provisio legis quam partis.* The statute of *Glocester* which prohibits a man do no waste, it is expounded that he shall not permit wast, but if I be bound that I shall not do waste, my bond is not forfeited by waste permissive.

11 Eliz.
Dyer 281.
Doct. & Stud.

52 *Fortior est dispositio legis quam hominis.* A man hath *interesse termini*, hee cannot this surrender, but if he take a new Lease *in presenti*, this is a surrender of the old *interesse termini*. And upon this rea-
son

son it is that conditions in law are so strong, as expresse conditions. 10 Report 67.
Litt. 378.

53 *Fortior & melior est provisio Legis quam hominis.* *Parceners*, by the law are to have equall portions of lands taylor and fee, now if one of them agree to take all her part of the taylor lands, she may suffer by this partition. A man is seized of three manors, of equall value, and takes a wife, and she takes one entire manor for her dower, which is charged with the rent she shall hold it charged, otherwise is it if she had recovered her dower, and had had a third part of each assigned to her. 1 Instit. 179.

54 *Fundamento destructo cadit opus, à quare non admisit*, is awarded, and afterward the originall record is removed by a writ of Errour, now the other fails though it be disadvantage to the King, who cannot now proceed for the contempt but by Green, if hee is attainted once for the contempt, the reversall of the first judgement afterward shall not aid him to avoid the contempt *ut supra*, an exigent M. 16 E. 3. goes out for felonie, and after a pardon of placito 25. fol. ancient date to the exigent comes, and all 75. things by the Law required are done, the 43 E. 3. 18.

P. 23. Eliz.
6 Report 13.

20 Aff. 7.

chattels are saved, an excommungement is for contempt of a letter missive from the high commission, the contempt is pardoned, the excommungement is also *exconsequenti*: Execution is sued upon a Statute, and then the Conusee makes a defeasance of the Statute, upon payment of twenty pounds, if it is paid, the execution shall be defeated, as well as the Statute. *vide*. 43. E. 3. 18.

2 Report 33.
Case *Doding-*
ton.

22 Aff 73.

55 * *Generale nihil certum ponit*, and is rejected in Law. A man is bound to devise all his lands in the tennor of I. S. in the Towne of D. the obliger may say, hee hath no lands there, so a man is bound to be *non suited* in all actions that he hath in the Common-pleas, hee may say he hath none there: otherwise if the condition be particular, as to be nonsuted in a *formdon*, &c. Inditement is thus, that A. is a malefactor or a common thiefe, it's not good.

56 *Generall words where they will helpe particular infirmities*. As *Scire facias* is a gainst two severall tenants, the Sheriffe returnes *Scire feci*, the two *modo & forma pro ut breve exigit*, now this which was joynt in the beginning of the

the return is now severall and good by the generall words *modo & forma, &c.* So where a Sheriff returns that *virtute brevis* 2 H.4.13. he hath done such a thing, and in the sequel of his return are many imperfections, they shall be helped all by these generall words, *virtute brevis*: see to this purpose 34 H.6. of these words *contra formam Statuti*, & what imperfections will be aided by these words; so by the words *secundum formam Statuti*, where it's said they shall have the force as if the very words of the Statute, &c. had been punctually expressed. An information is upon the Statute of buying titles, and there is a mistake in the record of the day of holding the Parliament, or in the ending of it, but because the words *contra formam Statuti* were in the conclusion, that was aided in the misrepetition of the date, or day of holding the Parliament, which was vain. Stamford 8 1.

57 Generall words in grants where they shall be restrained by particular words in the same clause, & contray. A man hath a mannor in O, and other lands not parcel of the mannor, and suffer a Recoverie of all, and declare by Indenture that the use of all his lands in O, shall be to the use

5 Report 7.

Dyer 13.

Eliz.

11 H.4. 4 Case

Barns and Hill

Michel. 7. Car.

in b. le Roy.

8 Report. 11

Case Carter.

of A, this shal not be of the Mannor which was particularly mentioned before. A. acknowledges a fine of the Mannor of D. with an advouson, and regrants the Mannor *cum pertinentiis*, the advouson shall not passe in this case. A Release to Jo. S, executor I. D. all actions now by this restrictive word executor no impedimēt shal be, but that this release shall have an operation upon all the capacities of I. S. The Obligee grants to the obligor, that he shall bee discharged of the bond, and if he is sued upon it, that hee shall plead this as a Release: It is a release presently without expecting Suit, &c.

58 *Generale descendens in particulare sine Specie, shall be ruled by that speciall.*

8 Report Case
Altham.

A man grants a rent in the Mannor of D. *percipiendum* in 100 Acres, parcell of the same Mannor, or *distringendum* in 100 Acres, this rent is charged upon this 100 Acres onely, so a man releaseth all demands, *nec non* title of dower in the Lands of W. this curbs the generall word demands, and ties it to the Lands of W. onely. I. H, grants his Mannor S. in A. and B. where this extends also into C. nothing of the Mannor in C. shall passe.

Dyer 261.
9 Eli.

9 Eliz.
Dyer 261.

A man devises all his Land in D. and the Hamblet of I, this excludes that Lands in other Hamblets then I, shall passe though within the same Town, but note if the speciall is first put down in the deed and generall word after that the Law is contrary, as when one is made Deputy Steward to take a surrender absolute, & *ulterius facere omnia que ad officium ejus in hac parte pertinent facienda*, this enlarges his power, so that this Steward now may take a surrender conditionall, &c. *Vide 7 E.3. 10. bene* upon this rule.

Trin. 26. Eliz.
inter Adams &
Fost. r.

59 *Hee that needs most let him blow the cole.* Upon this reason hee which is to have benefit shall do the first act. *Vide antea*, title *Act*, so where request is to be made, hee who is to have availe shall make it, &c. Detinue is brought of a deed of Release, the defendant garnish B, to whom this was made, &c. and upon shewing the deed, the seale was debrused, and the Plaintiffe would have had damages, and ruled no, for he hath no reason to complain of the debruser, &c. but hee to whom it was made, and let him blow the coal if he will.

29 E.3. 31.

60 *Integra lex separat & individua.*

51 H. 7. 29.

4 E. 2. F. Tittle
Judgment 229.21 E. 3. 20.
Dyer 291.

A Charter may be allowed for part, because it hath beene allowed in Eyre, and disallowed *pro residuo*. In debt upon a bond against two, the one acknowledgeth the deed, the other pleads in abatement, and it was awarded the Plantiffe shall recover a moyty. So a judgment may be reversed for part as a fine, for that it was ancient Demesne was reversed for that part and stood good for the rest. And note there is a speciall Writ of Errour to remove part of the Record, &c.

Dyer 13.
& 233.
Plo. Cafe.
Browning & B.

61 *Idem taken pro Simile*. So a limitation *ad eundem usum* was taken *pro tali usu*. Obligation is to pay 20 shillings at Michael. and the yeer following 20 shillings at the same Feast. It is taken for the like feast. *Vide* 5 H. 7. 39. 40.

Inconvenience, see afterward here fol. 63

21 H. 6. 10.
Plo. 30.

62 *Indefinitum supplet locum universalis*. A man is bound, his Feoffees shall grant a Rent, or make a feoffment, all ought to joyne in this grant. A man gives *bona sua* in D. Its all one as if he had said, *omnia bona dies, datus est partibus predictis*, its all one as if he had said *omnibus partibus*, a Writ is directed *Coronatoribus Lincoln*. Its all one as if he had said *omnibus*,

E. 4. 1.

bus, and is not intended 2 or 3. The statute of *Winchester* is that the hundred shall answer for the body of the offenders, this is taken for all the offenders, and the taking of two or more will not serve the turn. See for the pleading of this Case onely foure or five of the Inhabitants are to be named in *Certeine*, &c. A tenant pleads that hee is no tenant of the Freehold, and issue is joyned upon this, and its found tenant but for part, and of the residue not, this is against the pleador. See 2 R. 3. 17. 18. 6 H. 7. 15. 1 E. 5. 5. 27 E. 3. 21. This generall rule hath severall exceptions and restrictions. As in case the non observance of it makes for advance of Justice, as a *tales*, *quales*, &c. shall issue in favour of tryals, though onely one of the principall pannell did appeare. See 12 H. 4 tit: Certificate of Assize 4. And *Hobs Case*, *Institute* 1. Upon the same reason, *Vt res magis valeat*. R. 2. granted to the Abbot of *W.* that he and his successors shall be Collectors of *Dismes* granted *per Clerum Anglie*, this shall be taken for that part of the Clergie use, to grant such *dismes* which is the Clergie of the severall

11 H. 7. 18.
 Plo. 75.

7 Report 7.
Case Milborn.

Mich. 10. Car.
 inter *Lee & Smathers.*
Exceptions.

10 Report
Denband case.

8 Report 56.
 4 Report Case
Pro- of Corporations.

Provinces. Prescription is that the Major shall be chosen by the Comminalty, by usage this shall be restrained to the principall of the Comminalty, &c. A Common is claymed to a Mannor, it is by intendment all times of the yeere, but yet its not so strong as if expressed all times of year. See 30 H.6.2. 8 Report 91. 21 E.4.44 Dyer 186. 21 E.4.44.5.6.

Trin.8. Car.
Case Bullock.

59 *Ignorantia non excusat*, nor folly, but a man shall have prejudice by this much. The Clerk mistakes, *debet pro detinet* in a Writ, Ignorance is no excuse. If a man can read and will accept the declaration of the contents of a deed by one who declares it in a different manner, from that the truth in the deed is, *This shall not ayde him*, but he is bound by it.

Lit. 261.
Briton 62.

60 *Inter aequales melior est conditio possidentis*. Upon this reason 'tis that hee that hath an estate by wrong, shall hold against all others who have no title. If ten Mannors are conveyed to severall persons by one and the same Deed which of these happen to get the Deed may deteine it, where two severall persons have each of them power distinct to make a lease of such

22 E.4.21.
2 Report Case
Thorowgood.

4 H.7.10.

such Lands which of them leased it first shall stand. A Lord allows six Chaplains by his Letters Testimoniall all are presented to six severall Benefices, Pluralities the three first promoted shall stand, Two Attourneys reteyned conjunctem & divisem, the plea of him first pleads shall stand.

4 Report Case Drury.

12 H.7.9.

A Serjeant at Law brings an Action against an officer of the Kings Bench, the Common Place shall have the priviledge. See 48 E.3.20.21. 13 E.3.F. Affize 91. Where it is said that possession by halfe a day is not sufficient to gaine a freehold against him is a tort fesor, &c. and so titles equall.

61 *Iteration of a small offence will make it amount to a great one.* As if a Gaoler permit severall negligent escapes, this will grow to be in judgment of law as much and as high a crime as a voluntary escape.

39 H.6.33.

62 *Injuria propria non cadet in beneficium facientis.* A water runs upon the land of I.S. he stops it, by which my land is surrounded, I may enter his Close and debruse that which stops the water course. Lessee for yeers puls downe his house, hee shall not have the tymber was in it to redifie

8 E.4.52

4 Report Case
Herlaken.

4 Report Case
Edm. Corbet.

4 E. 4. 28.

34 H. 6. 11.

Institutes 4.
13.

18 E. 4. 6.

edific it, as he shall when its blown down: the same law is if hee cut downe trees hee hath lost his speciall interest in them for shade, &c. A man devises land to A. till a hundred pound levied and dyes, the heir enters & continues by four yeers in which by computation the money might have been levied, the Devisee shall have foure yeers more against him is heire. In a *præcipe quod reddat*, the tenant is essoigned at the *Grand Cape*, where he ought not to be this shall not turne to a discontinuance. One takes my goods by wrong, and them offers to an Image, my property is gone, but if afterward these goods come again to the possession of the trespassor, I may cease them out of his hands.

63 *In præsentia majoris cessat potestas minoris.* A Lord of the Parliament makes a proxy, and after comes himselfe into the house of Lords, though hee says nothing, the power of the Proxy ceaseth.

64 *Laches may prejudice but shall not ayde any man.* Tenant in tayle sells a hundred Oakes for twenty pound, the vendee delays the taking of them till the vendor die, he hath lost them for ever. A man brings a *Formdon* against two, the one pleads

pleads, *ne dona pas*, which is fouled against him, the other pleads Basterdy, if the demandant in this case do not pray his judgment against the first, till the other issue tryed against him which findes him basterd, he shall by this neglect lose the other moyty which he might have had. Custom of a Towne is after Corn and Hay, severed and carried away in such a field to put in Hogs, &c. if one will permit his corn to continue there where he had sufficient time equall to his neighbours, it is at his owne perill, and the other may put in *their beasts*, &c. as if the Corn had been taken away. A man hath five load of hay to be taken yeerly in such a Medow, if the grantee do not take their loads of hay one yeere, it is lost *for ever*, and he cannot take it the next yeer, for then perhaps he should take all the hay in that place which was not reasonable, and might put the owner without hay for that yeer.

15 E. 4. 27.

21 E. 4. 41.

F. barr. 20.

27 H. 6. 10.

65 *The Law avoyds Circuit of action.*

Upon this reason tis that where a Lessor Covenants to repair and doth not, the lessee shall not be put to a suit upon the Covenant, but shall deteine so much money out of his Rent, &c. annuity is granted to

12 H. 8. 1.

A. for which *he covenants* and grants to be with the Grantor in every place in the County, &c. if he fail to be with him, &c. he may plead it in barre of the Annuity, and shall not *be enforced to an action of Covenant.*

66 *The Law yields to necessity.* Upon this reason it is that in a Writ averment that they are the same lands shall not be admitted, because hee may have another Writ, but in a fine upon release, it shall rather then the land shall be lost, and the advantage of the *fine annuld.* If there be not sufficient to serve of a Jury, the tenant to one of the parties shall be sworne rather then fail of the tryall. The husband discontinue an acre parcell, &c. With the Advowson, the Alienee presents and dyes, the heir grants the Advowson now in so much that the wife cannot recover this Advowson, by recovery of the acre, because of the severance of this from the acre by the grant he shall present without recovery of the advowson, as if it had bin severed at the first. One cuts an Oke which falls upon the land of *another*, now if he could not prevent this, he shall be excused to enter into this land and take it away. The same law

is

8 H. 6. 23.

6 E. 3. 41.

5 Report Case of Amendments.

7 Report Cases of discont. scilicet.

38 E. 3. 25.

17 E. 3. 45.

13 H. 8. 16.

6 E. 4. 7.

is if beasts be driven by the high-way, and they run into the Corn, he may enter into the Corn to drive them out. In a *per quæ* 10 E.4.7.
servitia against a Prioress, for that she is 22 E.4.8.
incloystered shee shall attorne by her at-
tourney. A man gives me leave to come to 43 E.3.8.
his house, and after discharges me again, 20 E.4.4.
if I continue there afterward I am a tres-
passor, but if the countermand was in
time of a tempest, the law alters, and
they may stay there untill it be over, *sed*
not a differentiam inter necesse & necessa-
rium, though in *Latine* as *Davis* thinks,
fol. 12. they are used promiscuoufly, vouch-
ing the sentence of a *Roman Senator*, *Ni-* 6 Report. Case
hil magis iustum quàm necessarium, & Trotkop.
per Coke, Necessitas est lex temporis.

67 The Law will suffer a mischief rather
than an inconvenience. This word Incon-
tinence so much used in our Law hath the
force of against reason *scilicet*, artificial rea- Lit. 231. 138.
son perfected by use and experience termed Institutes 152.
summa ratio. And it is in truth when some
maxime of the Law is shaken. A man pri-
viledged in some Court is sued in *London*,
and the matter is actionable no where but
there in *London*, yet by his priviledge the
cause shall surcease there. This the reason 38 H.6.30.
that

27 E.3.79.

that a Fem covert or Infant shall not avoid *their fines* at full age, or after the husbands death. See title Voucher in *Fitz.* 81. 13 H.4.2. Matter upon like reason.

7 H.7.18.

40 Aff.13.

Michel.37.
38 Eliz.

68 *Lex non cogit ad impossibilia*. This the reason a Corporation, as Major and Comminalty may do pety ordinary things without writing, for the *infinity* of them, so a Sheriffe he shall plead generally *ea ratione, &c.* because of the impossibility to do otherwise in all the severall businesse of his office. The statute appoints that in *rediffesin*, the Sheriffe shall go to the place and there shall take the inquest if now the *rediffesin* is of a rent which issues out of divers Lands in severall places, so as he cannot be at all at once. Its sufficient to take the inquest at one of them &c. because of the impossibility, &c. lease upon condition he dwell upon the land demised, and he dyes at the end of ten yeers, the lease being for forty yeers, yet his executor shall enjoy this term, because the condition is become impossible, &c.

69 *Lex judicat de impossibiliter faciendis quasi factis*. So tenant in tayle suffers an usurpation, the issue is bound till the Church become void again, but if hee

had

had made an appropriation of it. In which
 case by judgment of law it wil never come
 void again in this case, hee may bring his
 action presently as if it were absolutely
 void. A Covenant is that lessee will leave
 the trees in as good plight at the end of his
 terme as he found them, and he cuts them
 down, an action lies presently for the im-
 possibility to performe, see 5. Report
 Case, Sir *Anthony Maine* ruled upon the
 same reason. A man submits to arbitre-
 ment, and then repeals the authority of the
 arbitrator, &c. this makes all impossible
 to go on, &c. and is as much in doome of
 law as if he had broke the arbitrement ac-
 tually, and his *bond* is forfeited, but *not a*.
 The Impossibility must be absolute, for if
 the least possibility remayne it alters the
 law, as where the condition was upon a
 feoffment to re-infeoff the Feoffor, the
 Feoffee is disseised, and then acknowl-
 geth a statute or takes a wife, &c. in this
 case at first sight in ordinary reason it is
 impossible he cannot make this feoffment,
 but hee must enter before by which the
 Land will be charged with these incum-
 brances, yet because the wife may dye, or
 he may procure a release of the statute be-
 fore

46 Aff 4.
 I. *Neveros*
 Case.

Temps E. 1. F.
 Covenant 29.
 7 Report 15.

8 Report case.
Viner.

2 Report Case
Julius winning-
ton.

12 E.3. Fitz.
Tic. Covet. 2.

18 H.6.13.

3 Report Case
Borraston.

8 E.4.1.
per Catesby.

fore the time of entry & rescoffment, there-
fore no such impossibility is in the case to
amount to a breach of the covenant. So in
case of trees before, if the Covenant had
been of a house in as good plight, &c. which
is out of repaire, and the term is welligh
ended within three days, in which a kinde
of impossibility is to doe it, yet an action
doth not lye till the term be wholly ef-
fluxed. *E converso*, The Law adjudges
sometimes that is impossible to be done as
actually performed. As where it was en-
acted that a statute then made should
have continuance till the King returned *à*
partibus transmarinis, and he dyed there,
this statute is now determined, as if hee
had returned. A lease is for yeers untill A.
accomplish the age of 21, hee dyes at
eighteene, this lease is determined as
fully, as if he had come to one and twen-
ty.

70 *Lex accepit voluntatem & dili-*
gentiam pro facto. No place is limited
where money shall be payed in the condi-
tion of a bond, if now the obligor happen
in company with the obligee intending to
tender him the money, and the other shifts
away to prevent him, &c. It seems in this
case

case hee shall be excused, because hee hath done his endeavour. A man gives a Jurour money to embrace him, though it happen the verdict do pass against this man, yet he shall be punished for this, & the law was that if one assaile me to rob me though he did not, yet he should die for it. See *Frosts* 28 H. 6. r. 12. Dyer 99. Case 5 Rep. & *Ridgways* Case 3 Rep. & *Plow.* 22. Exception 2. Not a, this exceptio where the Condition, *Adt. or, &c.* is to be done to an estranger there, to do what in him is, will not serve, but it shall be actually done, and its nothing to have done *quantum in se est*. As a covenant is betwixt *A.* and *B.* that if *A.* upon the tender of a hundred pound makes him an estate, then *B.* shall release to *A.* *A.* is all times ready to make the estate *pro ut, &c.* but the *100 li.* is not tender, &c. *B.* in this case is not bound to make any release. 23 Eliz. Dyer 371d

72 *Lex judicat de rebus necessario faciendis quasi re ipsa factis.* One erects a jetty above my house, by which of necessity the raine will fall and run upon my house or curtelage. Its lawfull for mee in this case to debruse it and pull it down before any rain have falne, all one as if it had falne upon the house. 5 Report Case Pentuudocke

- 72 The Law judges of that may be done as actually done. Upon this reason it is that the attornement by an Infant in pais is good, because he might have been compelled by a fine to do it. The Sheriffe may sell goods without any *venditioni exponas*, because hee might by such a Writ have been compelled to it. A Rent charge is payed twenty yecres without acquittance, and after a Writ of annuity is brought, he shall be received to plead payment as to a rent because hee might have done so if he had issued for it as rent. An office is grated for yeers, it is void because this may come to an executor. Albeit an essoigne is not cast, yet because it might have been done, a Jury shall not be demanded the first day. The King discharges all Intrusions, &c. and one hath entred at this time, yet because office was not found it cannot be said Intrusion, but resolved because an office may be found when the King pleaseth, it is all one in law as if it were found see 4 Report Bevil's case, bin to this purpose. Not a, If a thing is in my Will to have, it is all one as in my possession, so where it is in the will and power of a prisoner to escape, it is all one as if hee had escaped in judgement
- 9 Report Case
Con. e.
- 5 Report Case
Hoe.
- 37 H. 6. 19.
- 9 Report Case
Sir George Reynolds.
- 1 E. 3. 11.
- 11 Eliz. Dyer.
284.
- 10 H. 6. 6.
42 E. 3. 10.

ment of law. He which is acquitted upon an *Appeal* may this *shew* upon an Indictment, but if hee do not so he shall have no damages. See 4 Report *Vernons Case*. Fitch. Coron. 432. Exception. 14 H. 7. 2.

73 The Law will iudge of some things actually done as not done, & è converso. Tithes are let forth *actu*, but re-taken by the owner, it shall be as if they had never been set out at all, so money payed to lose a mortgage, and if taken back againe, it is as if not payed at all. One hath a protection *dum moratur*, &c. Comes over to provide victuall, it is in law no comming to break the condition, *D'Itaque non redeat*, which is in it. A demandant enters into the land in question by disseisin to the use of another it is no entrie. Beasts escape out where the Lord comes to distreine as to him they are yet upon the land, and hee may take them, &c. one shall be said in possession of a Ward gone six houres before out of his possession. *Wades case.* 5 Report. Institut. 1. 18. 131. Institut. 1. 268. 3 Report Case Ratcliffe.

74 The Law adjudges the same thing in esse, & non esse to divers purposes. An estate in remaynder discends to a particular estate, yet if he be an Infant hee shall not have his age, nor be in Ward by descent of this remaynder, but shall be said in

2 Report Case
Archer, &
30 E.3.6.

6 Report Case
Higgins.
9 E.4.51.

7 Report Case
Lilington.

F.n.b.223.
14 Eliz. per
opinionem
Dyer.

of his first estate. A particular tenant grants a rent & after makes a Feoffment or surrender which determines his estate, yet it shall be *in esse* to hold up the rent during the said estate. Two men are bound in an obligation of a hundred pound, and a recovery by judgement is against one of them, this dammes the bond as to him, but as to the other it is *in esse*. A man is bound in a statute, and is seised of a rent and before the extent he releases the rent, yet it shall be *in esse*, as to the Comsee. He in reversion infeoffs his Lessee for yeers to the use of I. S. &c. This wil work a surrender by the law of the term. Yet by the statute of Uses it shall be *in esse*, and is saved. The Lord releases to his tenant being an Abbot, who had purchased in Mortmain the Seigniorie is extinct, yet as to the Lord Paramount it is *in esse*. Lessor grants a rent, and then accepts of a surrender, hee shall hold now charged with this rent presently, but if he had granted the reversion to a stranger who accepts of a surrender, hee shall hold discharged of this rent during the life of the tenant for life. See 9 E.4 18. and 6 Report, Sir Anthony Mildmay's Case of a rent to cease for a time, and to revive for another time. 1 Report Anne

Mayos Case, simile *5 Report Halls Case* in a sentence after appeal it is *in esse*, as to the costs. *Vide 6 Report*, Lord *Aburgaveries Case*, *9 Report Case*, *Strata Marcella*, where its said those things are *in esse que jure sunt*. Vouchee is tenant in law, but to some purpose, not to have a release to him, so tenant by courtesie who hath granted over his estate. *Institutes* 1. 273.

76 *Quod lex dicit factum est sic agi*, by the party himselfe. This is the reason that in all dealing with officers, tradesmen, &c. they will declare that agreement, was to give them *tantum, quantum meruit*, & though no such agreement can be prov'd, it shall passe for them as if such agreement had bin proved as in case of a Taylor, it is good evidence, that he put the clothes to make without more the Law says the rest. *8 Report* 147.

77 *The Law judges that is illegally done, as not done at all*. One gains the estate of a copy-holder by disseisin, and leases this for years, this shall not destroy the custom. A man takes beasts for to agist his common, this gives him no seisin because not legall to use his common so. *4 Report Case of Copyhold*, 22 Aff. 84.

78 *Leges priores per posteriores abrogantur, & contra*. But then the later

Statute must be contrary to the former in substance or quality, and so if the later be negative, as *assise non capiuntur nisi in proprio Com.* This of more power then if it had said, *ascise capiuntur in proprio com.* In the first it will warrant a plea to the jurisdiction of a Court, in the latter not so, if he be impleaded in any other place then the Countie where the Land lies. But a Statute in the affirmative doth not alter a statute formerly made, or a custome. Statute 21 *H.8.* is, that if one who hath a benefice of the value 8 pound takes another, and is inducted, the first is void, this doth not alter the Law before that the second benefice doth make void the first, though of lesse value then 8 lib. and so before induction in such case. A man hath wreck by prescription, and it is enacted, *Quod Rex habebit reekum maris per totum regnum*: This shall not take away my prescription, *aliter* if the prescription had gone *per totum Angliam*, and so as large as the Statute: As the Statute 5. *Eliz. 4.* In acts that he who sets up such trade must be apprentice before, &c. alters the custom of the Realm to trade freely before without such service presedent. The Statute

11 Report 62.
3.

38 H. 6. 18.
8 E. 2. Judge-
ment 240.

4 Report case.
Dioby and
Holland Case.

5 Report case
Sir Hen. Con-
stable.
9 Car. case.
Bradshavv in
b. Roy.

tute that Sheriffs shal deliver Indictments to the Justices of Peace by Indenture, yet if he do not so, they are not void. Things of necessity are not altered by generall words of an Act of Parliament. So if against common reason, *Plo. 88.* So if absurd, *Dyer 314. 27 H. 6. tit. Annuity 41. Institutes 2. 198. Dyer 224. 43 E. 3. 22.* It is ordained that Commissioners Ecclesiasticall shall punish abuses against the book of common Prayer, yet the Ordinaries jurisdiction is not taken away. See *Institutes 1. 96.* to this bene. The words of a later Statute by Construction or Interpretation only shall not abrogate a former statute, yet costs were due in a *quare impedit*, by the Common Law, and damages are given by statute *W. 2.* in this action. Costs are by construction taken away. So the statute of *Marlb. cap. 6.* is repealed by the affirmative statute of *32 H. 8. of Wills.* See by mee if it is not because these are contrarious in reason, which equall as if in expresse words.

4 H. 7. 11.

10 Report 61.

5 Report 71.

7 Report 14.

4 E. 4. 3.

7 Report *Kens case.*6 Report *Cim- sons case.*

78 *Lex non cogit ad vana per agenda.* But rather in some cases will allow the thing as done which should be in vaine to do. Lessor Covenants upon Surrender to make

5 Report Case
Sir Ant. Maine.

11 H. 7. 10.

7 H. 6. 31.

27 E. 3. 16.

Michael. 11.
Car. Rot. 310.
B. Roy.

make a new lease, he grants the reversion away for yeers in this case, the lessee need not make any surrender, but shall have his action so soon as he pleaseth, because it is vain to make a surrender when the Lessor hath himself disabled, &c. by his new lease, Covenant to sing Masse in such a Chappell which falls down, the Covenantor needs not goe thither and proffer to sing Masse there, &c. Goods are delivered to re-deliver upon request, the Bailer delivers them to a third person, I may take them without request, Protection is cast in a cause where two are sued as husband and wife, and shee comes and pleads she is not his wife, she shall not be admitted, and for this cause though shee desire it not, yet she shall not be estopped to say she was a Fem sole. The Lord covenants upon surrender of the old Copy to make a new one, now because the making of a new Copy is a surrender in law of the old, therefore an action of covenant lyes against the Lord if he doe it not without such surrender which was idle to make. Exception is to this rule. In case the thing may be of some validity, and is not absolutely vain, though *revera* it is idle. As where I. S. is bound to present I. D. to the Church of Sale

when this shall next be void. In this case though the obligee is married, &c. by which hee was disabled, &c. yet hee must be presented if hee will save his bond because he may have a dispensation from the Ordinary. So where *Vilary* in felony is to be reversed, a *Scire facias* shall go to the Lords, &c. though he hath no land, &c. untill the Court shall be apprised thereof by return of the Sheriffe, or the Kings Attorney. See 39 E. 3. 22. 23. 21 E. 4. 40. 47. 20 Aff. 1. Perkins 167. 7 H. 7. 5.

78 *Lex non caret in syllabis vel literis modo de substantia constat.* A Writ is that such a one *fuit non compos mentis*, and the traverse to this was that *absque hoc quod fuit extra sanam memoriam & bene*. So *Iturus* is put for *profecturus*, its well enough. *Avowrie* is because a 100 pound *pro redditu predicto*, was behind, and sufficient though *de redditu* had beene more apt. The King brings an action of account, and the Writ is, *quod reddat Com-potum nostrum*. Where it should be *suum*, and yet holden good. The Mesne grants to the Tenant to acquit him against the Lord Paramount and his heires, hee shall acquit him against his wife, &c. A bond is to resigne to the obligee, yet it shall be 16 E. 4. 3. 39 H. 6. 43. ib. fol. 39. 25 E. 3. placito 21. 1 Institu. 241. 14 H. 4. 18.

bee done to the Ordinary.

8 Report case
Frances.

So *The Law is sometimes stricter then the words of the party in force.* The Lessor grants if the Lessee is disturbed he shall have fee, every disturbance wil not do it, but shal be of the lessor himself to raise this Contingent fee. A remaynder is limited to children unprofered, this shall be such as are not preferred when this remaynder happens to fall, and not unpreferred at the time of his death, who made such will for if they be preferred afterward before the remaynder fall it is sufficient. A statute is that Justices of Gaol-delivery, or Oyre and Terminer or any two of them shall heare and determine, &c. in this case though there be but one, hee shall execute this well enough.

Ibid. case
Alice Fulhurst.

Institutes 3.
136.

81 *Lex non est curiosa.* Winks at small faults, one brought a Writ of Conspiracy for indicting of him the fourth of *August*, the Defendant makes a Justification for executing the office of Justice of Peace, without that he was guilty of any conspiracy before the said day or after and ruled good though he doth not precisely answer the very day laid. An action *quare fossatos fregit*, where it is more proper to lay,
pre-

12 E.4.18.

prosternavit, yet ruled good. A lease is
 made to B. and his wife, she survives and
 marries W. and in pleading of a new lease,
 It is said to begin after the end of the lease
 made to W. and yet held good. Assumpsit
 was in consideration hee should surcease
quarelam pro 7 li. and it was an action
 upon the case which is not for a summe
 certain, but damages seven pounds, yet
 holden good by the better opinion. Ac-
 compt is brought of a resceet *per autor*
Mains, and a release pleaded of accompt
 by himself, and admitted good. *Champerty*
quod cepit manutenere & adhuc manute-
net, in a plea which is ad judged and deter-
 mined, and *adjudge* good, yet it cannot
 be good in the present tense, *Misrecitall* is
 of the very ancestor, as a man says himself
 heir to the grandfather, whereby the office
 it was to the father, yet good. A condi-
 tion was to lease as, A. thinks meet and in
 the record its pleaded *non demizavit, nec*
appunctuavit and good, so not curious in
 the translation of the English into Latine.
 In case of waste *de hominibus*, it is proper
 to say *in exilio hominum* but if he said *fecit*
vastum in hominibus, it is good enough.
Vient lassie supra titulo, where it appears
 be-

12 Aff. 28.

Plo. 192. cas
Adams.

Hill. 11.

Car. case Law
rence.

10 E. 3. F.

Release 38.

27 Aff. 5.

10 Eliz.

Dyer 359. 360.

5 Report 23.

2 H. 6. 11.

before there were many titles, and yet good, *Vide* 38 E. 3. 20. 27 H. 6. *Ultimo. Curiosity circa horam diei.* Upon this reason it is that *fuit* is oftentimes admitted for *est*, pertinent for usually occupied, ancient office for *petie continuance* &c. *Vide ante verbo Idem.* The obligee says to the Obligor, that he himself is discharged of all bonds, this is a good release being by deed, albeit it is improperly spoken.

81 *De minimis non curat lex.* A quill full of gold or silver oare shall not cause a copper or tin myne to be to the King as a myne royall. *Nota*, Amercement is so small a thing a man shall not be restored to it, though there be a lawfull cause to discharge it, so where a judgment is reversed, I shall not have restitution of an amercement given against mee, cutting of trees to the value of two pence is no waste. See *Plo.* 85. where it is said that a lease for an houre of a pretended title or right is within the statute of 32 of H. 8 of buying titles.

82 *Law presumes more then the partie himselfe sayes.* An Ordinary returns for cause of divorce that the parties are *infra annos pubiles*, &c. The Law sayes there are

Dyer 316.

10 Report of B. Salisbury.

10 H. 7. 27.

Plo. Hill. & G. Case.

9 Report 52.

Plo. 339.

8 E. 4. 25.

F. n. b. 60.

Plo. 329.

7 Report Case
Kens.

are more causes. A man is bound to infeffe
me of Lands worth ten pounds by year,
&c. pleads that he infeofft me of the Man-
nor of D. and S. which are worth ten
pounds by year, it is no good reply to say ^{14 H.7.15.}
he infeofft me of the Mannor of D. onely,
without saying what it's worth, for it
may be worth ten pound *per annum* of it
selfe, though hee said both were but of
that value: a man covenants with I.S. that if
he do not warrant the Land to him he will
save him harmelesse upon suit, he enters
into the Warrantie, though this satisfies ^{46 E.3.28.}
the words of the Covenant, yet not the
Law, for hee shall render to him in value,
otherwise, he doth not performe the Co-
venant.

83 *Lex intendit optima perfecta &
effectualia, & legalia.* A man hath esto-
vers in a wood, and he comes with force
and armes, and cuts down trees, it shall ^{14 H.8.7.}
be intended for his estoovers, and not other
wise, for where the thing stands indifferent
right or wrong, the Law always judges the
best: Where it's said such a thing to be
done, it shall be intended *prima facie* law-
fully done, as where one pleads that hee
was possessed of a Hawk, *ut de bonis proprio* ^{Dyer 306.}
is,

42 Aff. 21.
6 Report Case
Colliers.

10 Report

3 Report Case
Fines.

Plo. Case.

willowby.

11 Report

Case Metcalf.

5 H. 7. 25.

37 H. 6. 18.

35 H. 6. 54.

Institutes 3.

214. 185.

5 Report 112.

Plo. 220.

20 H. 6. 23.

it was intended lawfully, where speech is of time indefinitely, it shall bee intended the present time. A man is bound to appar, it shall be in person. Where it's agreed a fine shall be levied, it shall be a fine upon the stat. of 4. H. 7. A challenge is, because such a one was listet to the Sheriff, it shall be intended of the whole bloud. Where speech is of a judgement to bee given, it shall bee intended finall judgement. A Lease is made to an Abbot for life, it shall be intended his naturall life, and if he be depofed, his successor shall have it during his life. Hee that claimes confuses of plea in his own case, the Law supposes he will doe right and be indifferent. A Statute which speaks of attaindors of treason, intends legall attendors, and not erroneous: so of an office, whereof an assigne intend it a complete assigne, &c.

46 E. 3. 38.

4 E. 4. 29.

85 *Lex omnia suaviter, & ad melius disponit.* A Writ is, *reparare & munda-
re fossatum & ripariam*, The Law will apply the most apt Substantive to his verbe, *mundare* to *fossatum*, *reparare* to the bankes, &c. The *solvendum* was to the Obligor, the Law will alter it
and

and make it to the Obligee, and so the
 Plaintiffe shall declare *quod nota*. A Writ
 of entre is upon the Statute of *W. 2. quare* 4 E. 4. 22.
ingressi sunt manerium de A. & B. ac u-
num messuagium, ten Acres of pasture, ten
 of medow, in the Town of P. &c. and
 the case was that no such Town of P. is
 without addition, and so in strictnesse of
 Law the writ was to be abated, but now
 to save this the Town shall be referred to
 messuage and lands, and not to the Man- 19 E. 4. 6.
 nor which is good without any vill layed
 and the writ abated, as to those and flood
 good as to the Mannor by this fair and
 handsome disposition of things. Trespasse
quare clausum of husband and wife, & *bo-*
na sua cepit, and declare of a taking before
 marriage, and the Court said that this 7 H. 7. 2. 3.
 word *sua* being indifferent shall refer unto
 the wife onely, and so good by this orde-
 ring that word, Trespasse *contra pacem*,
R. 2. & Regis nunc where part of it was
 in the one Kings reign, and part in the o-
 ther, and so declared, though the Writ is
 joynt *contra pacem*, the trespass shall 11 H. 4. 15.
 be so marshalled to make it good. *Cessavit* 37 H. 6. 2. 17.
 is of divers services, it shall be referred to
 such services onely in which the Law says

6 H. 7. 7.

a cessor may be and not to others, as homage, &c. In a *Quo warranto* prescription, is alleaged for waife and possession of the Abbot, and the Act of 32 H. 8. of *Reviver*

9 Report Case
Abbot Strata
Mercella.

pro catellis fellonum, & *eo waranto clamat omnia ut spectant* to the Mannor and good, though *catalla felonum* cannot in Law be spectant to a Mannor, the Law will refer this word to other things before mentioned, which may be appertinent to a Mannour, or else make that word as void, rather then overthrow all. A man grants a rent *de molendino suo percipiendum de se & heredibus*. The Law will marshall it thus that he grants the rent for him and his heires, *percipiendum*, out of the Mill, &c.

22 Aff. 66.

86 *Lex semper dabit remedium*. A

24 H. 8. 1.

11 Report
Lisfords Case.
1 Report 93.

man leases land excepting the trees, hee shall by law have free egressse and regresse for to come and cut them down and carry them away. Where the statute gives a third part to him who discovers an offence against any statute, he shall have an action for this, albeit it is not expressly given.

37 H. 6. 4.

87 *Lex judicat de insufficienter vel vane factis quasi omnino infectis*. A Bailly of a Franchise makes an insufficient return, it

is as if *nullum dedit responsum*, and a non Institutes 2.
omittas shall be awarded, and hee shall lose the franchise, *hac vice*, no office and an insufficient office all one. Sommons by one Sommonour, is as if none at all had bin: if a rent is granted but no atornment it is as no grant. Presentment to a Church sul before, though the presentee hath accepted of it, will not determine his annuity granted him till he should be presented. A man is acquitted upon an insufficient Indictment or appeal, no damages shall be given, but is as if no acquitall had been. The power of an arbitratour is repealed, but it is imperfect because notice was not, &c. he may well plead, *non revocavit*. An appeal is brought upon an Indictment, but because the Indictment was insufficient it shal be taken as no Indictment had bin, & abettors shall be enquired off. *The same law is where a thing is done in part onely, as where debt is payed in part. Vide 5 Report, Case Lord Mountjoy. Institutes 1.25 4 Report, Case Vernon.* The same law is where a thing is *vane factum*, and so acceptance of a vaine thing is as none, a Commission of the Peace is direct to two, which are dead, this will not repeale a former

453.

5 H.7.28.

3 H.7.11.

Plo.19.

Stamford 51.

50 E.3.17.

14 H.8.21.

26 E.3.69.

Fitz Coron.

444.

27 Aff.25.

8 Report Case Vinior.

20 E.4.6.

10 H.7.24.

26 E.3.4.

P. Brook 509.

Commission. One makes an Indenture or other Writing under seale of receipt of goods, this works nothing more then if no deed at all had been, but a deed of receipt of money shall conclude for to say *unques son Receiver*. A *Metropolit* doth commit administration where there were not any *bona notabilia*, &c. it is as none. An Infant grants a rent, or no attournment is to such grant by the tenant in case of a man of full age these may plead *ne grant a pass* for the insufficiency of them.

88 The law will accept of that is good in grants or pleadings, and reject the surplus. I infeoffe *A.* and grant to *B.* by the same deed that I shall warrant for me and my heires to *A.* that is a good warranty to *A.* and the words to *B.* are void, A man grants 20 load of buche to *Io. Rosset* and his heires, *quorum 16 predictus Johannes habuit ex dono Richardi patris mei*, &c. albeit *Io.* never had any such grant before of the Father, &c. the grant is good for the whole loads. A Bishop certifies bastardy, and endorses the reason because the Father was absent seven yeeres. The Law will reject this later part, and rest in the former of Bastardy A Writ goes

27 H.8.22.

49 E.3.3.

10 E.3.32.

14 H.8.21.

24 H.8.2.

10 E.4.56.

10 Aff.14.

4 Institute 48.

11 Aff.24.

goes to chuse a Burgesse of Parliament, no Lawyer, the Law rejects this last.

89 *The Law is more agile in working then the act of the party.* This the reason that where lands are devised to him, that is heir at law, he shall be in by discent, and not by the will. Tenant by the curtesie is the reversion to the wife of I.S. he infeoffs the husband and wife, it shall be a surrender to her, and the husband takes nothing. See 11 Aff, 24. 20 Aff. 16. 35 Aff. 11.

90 *The Law where it enjoyns an Act to be done will provide he shall not be hurt, à latere that doth it.* And for this, where I have annuity and many arrears are, and then, it's due at Mich. subsequent, and I do receive it then and give an acquittance, now because he is not bound to pay it me without acquittance, therefore because I could not receive it without this acquittance, it shall not bar me of the arrears due before, *aliter*, in case of rent. 3 Report 65.

91 *The Law regards the principall thing, and not additional.* As in case of a Mill, which is in demand, it's no matter whether Corn-mill, Paper-mill, or Fulling-mill. A. grants me the yearly annuity of a robe with furs, when I come to sue 4 Report Case Luttrell.

27 E.3.73.

for this, I shall onely mention a grant of such a robe yearly, without mentioning furs.

48 E.4.15.

92 *The Law adjudges the deniall to doe a thing as the not doing it or breach of Covenant, &c.* A. delivers B. ten pounds for certain woad, if hee like it when hee sees it, and if hee like it not, then to re-deliver the money, if when he sees them he deny to have them, the bargain is determined, and no agreement after will make it good. A man is bound to doe an act when I request him, and he sayes hee will not doe it, hee hath forfeited his bond.

15 E.4.31.

14 H.8.23.

11 H.6.1.

19 Eliz.Dyer

356.

93 *The Law is not satisfied with shadows but substances.* It is not sufficient for a labourer to be retained in service, if he doe not actually serve. If one accept of a thing in satisfaction of another which is of no value it is not good. See *Wades Case*, 5 Report, to this purpose: 46 E. 3, 26 & 33. 46 E.3. 28 *Case of Warranty*.

Plo.260.

13 H.7.14.

94 *The Law hath an eye to the beginning of Acts.* A Lunatike smites himselfe with a knife, and after becomes of sane memory, and dies, hee shall not forfeit his goods. I have an intent to strike I. S. and

and it happeneth upon I. N. it is a mai-
hem, &c. If presentment be in time of
war, all done upon that is void. A servant
kills his Master after he is departed upon
malice conceived before in time of his
service, this is pettie treason. A man a-
bates parcell of a gorse, by which all is
broken in time shortly after hee shall bee
charged of repairs of all and shall answer
damages of all.

6 E. 3. 41.
2 Report Case
Bingham.

Fitz Coron.
210.

16 Aff. 3.

95 *Loquendum ut vulgus*. A. sels to
me ten Acres of corne, it is good onely
for the corne, and upon this reason shall
the construction of a deed be made to con-
troul the sense of the Law.

17 E. 4. 1.
Plo. 29.

96 *A lawfull act by matter, ex post
facto, may become unlawfull*. So where a
distresse is taken well, and killed after-
wards, so if it be sold, or hee claime profit
in it. A man hath a house boot, and takes
this every yeere, as he may doe though he
use it not of 20 years after, for it is not
good to build with before it be seasoned,
if now he sell it or convert it to other uses,
he is a trespasser. The same law is where
an act is well done by authority of the
partie, as I deliver a chest to one who
breaks it, trespassie lies, he which is di-

16 H. 7. 14.

2 E. 4. 5.

22 E. 4. 47.

13 E. 4. 9. 9.

9 H. 6. 29.

11 Report 11.

10 E. 4. 3.

M. 2 H. 8. Kell.

- strained payeth his rent, and afterwards is
 21 H. 7. Kell. denied to have his goods delivered, hee
 shall have an action of trespassse or de-
 8 E. 4. 17. tinue. So in many cases by not doing
 16 H. 7. 14. some *act subsequent*, a former lawfull
 11 H. 4. 58. act shall become unlawfull, as where the
 Sheriff makes an arrest, and returns not
 8 E. 4. 9. the *Capias*, or if it be done by his Bailiff or
 21 H. 7. 23. servant, and no return, it will make the
 Sheriff himselfe a trespassser though not
 the servant who is to be quit in such a case,
 &c. An Executour commands the tak-
 7 E. 4. 4. ing of goods of the testator,, and after
 38 H. 6. 8. refuseth to prove the Will, he is a trespass-
 21 H. 7. 23. ser, but not the servant, the Sheriff seises
 the goods of one out-lawed and after doth
 not charge himselfe in his account with
 them when the partie is pardoned or out-
 lary reversed, hee shall have an action
 of trespassse against the Sheriffe, The Or-
 dinary refuseth a Clarke for lawfull cause,
 as insufficiencie, if he examine him after-
 wards, and accept him, he makes himself
 punishable for the disturbance before. A
 Writ well purchased by matter subsequent
 10 Report 134 as death of one of the demandants may
 become in apt or false, and so abate. A
 man is arrested by command of the Justices
 in

in *Westminster* Hall, this is justifiable, the *same Term*, without record thereof, but in another term not, unless a Record bee of it, and by negligence herein he may be punished by false imprisonment. 10 H. 7. 17.

97 *Malitia mutat legem.* A is bound to inclose against a close of mine called White Acre, if my beasts go into his for lack of his fence, it is excusable, but if my Close be sown with Corn, &c. by which hee was secure and made not his fence, if I should now put beasts into my Close so sowne of purpose they may escape, &c. there he is not to be excused. So an Infant in case of Murder shall be tryed for his life where malice and subtlety appears, *aliter non.* 39 E. 3. 3. 3 H. 7.

98 *Melior dabit nomen rei.* Husband and wife joynt executors, the Writ shall be *executoribus* and not *executrici*, some convenient proportion of gold or silver oare shall give the name to a myne to be a myne Royall, though a great bulk of Tin is. Lether of a sho shall give the ownership of the threed of I. S. used in the making to the owner of the leather, and so he shall have all the property. 22 H. 6. 30. Pl. 323. 5 H. 7. 16.

99 *Magis dignum trahit ad se minus.*
Char-

14 H. 4. 30.

10 E. 4. 14.

40 H. 6. 18.

42 E. 3. 13.

29 E. 3. 19.

43 E. 3. 13.

22 H. 6. 27.

38 H. 6. 14.

18 H. 6. 35.

20 H. 6. 32.

21 E. 4. 34.

46 E. 3. 8.

Perkins 50.

Charters are put in a box, this alters the nature of the box from a chattel, and now it shall goe to the heir, and it is no felony to steale this box, nor lies a *Capias* of it in detinue. See 30. H. 6. *Fitz. tit. bar. simile*, Where the realtie shall prevail, issue is, if such an one was instituted and inducted, the tryall in this case shall be by jury by reason of the Induction. A man reteins a servant to serve in all occupations, now because wager of law doth not lye in case of service in husbandry if debt is brought for wages, hee shall wage law in none of them. An action against two, and the one ought to have priviledge of Chancery, he shall be outed of this and all shall be at the Common Law. A Lease is of a chamber & a bed rendring rent, in debt for this rent, the defendant shall not wage his law for the bed, because the other is *Magis dignum*, and shall rule the other. An exchange is of Greene Mede for blacke acre, and twenty shillings rent in this case all shall be by deed, not that the land is lesse worthy, but because if it be not by deed it will be void for the rent, and so overthrow the exchange for all, See 11 Report Case Auditor Curle 46 E. 3. 8.

100 *Magis continet in se minus*. Plu-
 rall number comprises the singular, &c.
 If a man is bound to pay twenty pound
 and tender is of that and more it is good.
 Commons grant tonage and poundage for
 four yeers the Lords agree for two yeeres,
 they need not send backe this bill to the
 House of Commons for their assent. *Cu-*
stome was to grant Copyhold estate *in*
feodo, this implyes that hee may grant for
 life, &c. *Quare impedit*, in the Register is,
presentare ad Ecclesiam, by this hee may
 have *pro tertia parte*, &c. *Procedendo*, sup-
 pose an Assise before *Stoufe & Burton*, Ju-
 stices, &c. and it was also before *Shard*,
 & good because three implyes two. An a-
 ction of battery is brought & the evidence
 for this proves it a *Maihem & bene* because
 it is battry & more. A man is restored to all
 lands forfeited by his father in fee or taylor,
 that he hath but for life, shall be restored.
 Exception. Traverse is of a feofmēt by two
 pleaded, and its found that the Feoffment
 was by three, It is against him who pleads
 this. *Vide 9 Report 52.3*. Power is given
 to make leases for yeeres, &c. Yet he may
 make one lease onely.

33 H.6.17.

4 Report Case
Coppolyhold.

10 Report 136.

31 Aff.1.

39 E.3.20.

Plo.86.7.

7 H.7.13.

14 E.4.1.

6 Report Case
Fitzwilliams.

101 *Modus & Conventio vincant*
legem

W. 2. 50.

Dyer 181. 312.

7 Report
Maunder's Case.40 E. 3. 6. & 2.
Dyer 33.

8 E. 4. 9.

legem & Regem & contra. This rule is agreed in *Magna Charta. Conventio legi deroget*, Barreth the Law as the translator hath it. The Law says *Dyer* will not determine contrary to the agreement of the parties, and for this cause where a gift in taylor is, the law says its to the use of the Donee, yet by the deed it may be to the use of the Donor. A rent is granted to one and his assignees *pro consilio*, this may now be assigned which without this agreement in the deed could not. And note by this agreement a man may tye himself to things out of his power to do, and which, *quodammodo*, are impossible & which the law frees a man of by common right. As where a man tyes himself to repaire, banks which are subverted by a floud, yet hee is bound to repair them. So to repair a house blowne downe by tempest, which was a good plea in an action of waste. So where the Lessee tyes himselfe to leave a house in so good plight as hee found it, if it was feeble at the time of leasing and falls down, he shall make a new one, which by law he was excused of. Sheep are letten, & the lessee covenants to render the polls at the end of the terme, he shall do so though they

they dye of the Murrain, &c. The banks may be repaired, the house built, new sheepe bought, for to render the poles ^{40 E.3.2.} is the number not the very same. A man undertakes by covenant to get the good will of such a woman, or that a beggar shall pay 1000 pounds that such a field of corne shall grow, &c. that such a woman ^{Perkins A. 146.} shall have a childe, that I. S. shall make a feoffment of his Land, the Law sayst these are possible, but if the Law say it is impossible, I am not bound by my Covenant, as where it is to leave a Wood in as good plight at the end of the Term & its blown down, so to goe to *Rome* on a day: So of the case where it's covenanted, such a meadow shall not be surrounded, or that such a house shall not bee burnt, and it is by lightning, &c. it seems in neither he shall be bound because impossible: So also where the matter agreed is against the Law. A man agrees with I. S. that if hee pay him not 20 pounds, he shall imprison him, &c. though he payes not the money at the time agreed, hee cannot imprison him. So a man agrees to a By-law made to imprison for the penalties, &c. this shall not binde him, Justices of assise held plea of Land in ^{Vide Dyer 334} Poulton de Pace Regni, &c. 11. See *Heyburns* Case. 14 E. 2. cited in the Case of Ship-money. ^{Report 64.} ano-

8 Aff. 16.

Institute 1.
146.

18 E. 3. 39.

7 E 6. Dyer 87

5 E. 4. 8. Case
Garter.

F. n. b. 264. D.

another Countie, then their warrant was, and the parties did agree to it, this shall not bindethem, but if either is put out by execution, *inde, &c.* hee shall have an Assise. If parties agree the distresse shall be irreplegiabie, this is void, as against Law. The Defendant would render the dower at the day in the writ, but did forbear by consent of the Plaintiffe, yet hee shall bee amerced. The King reserves a rent, and a condition to reenter, if it is demanded and not paid, but because the law is, the King need not make any demand, he shall enter without demand, this speciall agreement notwithstanding. So in case of incidents which are inseparable by Law, no agreement of parties will separate them, as where an Annuity is granted for the exercise of an Office, and there is a proviso, if the Office bee taken away, yet the annuity shall continue, if the office is taken away, it shall cease. See 44 E. 3. 19. & 36. *bene*, to this purpose. *Ligat Regem in casu*. The King makes liverie to his Ward, without excepting that the dower shall be assigned to the wife by him: the King is bound by this and she shall sue the heire in a Writ of dower. The Kings Tenant alieneth part
of

of the Land holden, the King may distrein
this alienee for the whole rent, and is not
bound by the Statute *Quia emptores terra-* F.n.b. 235.
rum, but if the alienee make a fine with
the King for this alienation, then hee
shall onely pay his part of the rent.

102 *Nihil dat, quod non habet.* A
Tenant for years cannot give seisin of rent 6 Report Case
issuing out of free hold to maintaine an *Brediman.*
assise, because himselfe hath not free-hold.
Conusee by fine of a Reversion bargain,
this to I. S. hee cannot distraine, because
his barganer could not. Reversion is 7 Report Case
granted by fine, the grantee disseise the *Knotford in*
tenant and infeoff, the lessee enters, this is *Cafe Malory.*
no attornment here, because hee shall not *Pl. 281.*
be in better plight then his feoffor: An
administrator cannot have greater proper-
ty in goods of the Intestate, then the *Ord-*
inarie himselfe had before, yet by words in
the Statute he hath. Issue in tayl being
bound by the Statute to pay debts of the
Kings when the estate by alienation shall
be disposed nu to another, hee shall bee in
better case, and is not bound to pay these 7 Report Case
debts, for the Statute extends not to him,
& so is at the cōmon law, in which case by
death of tenant in tayl the issue & al under
him

- him were discharged, so where a custome enlarges the power of a Grantee. A Lessee of a Mannor is, excepting the trees, in which Mannor are Copyholds now hee himself cannot cut trees they are excepted, but if he grants a Copyhold, the grantee may cut trees by the custome which outstrips that Lease. Upon the same reason it is that *Prerogative* of the person of a Grantee will adde power, &c. which the Grantor himselfe had not, as where a reversion in part is granted to the King he may *enter for condition* broken in this part, which the Grantor could not do. The like law is when a man comes in by act in law, as by Escheat, &c. hee may distreinethough he who dyed without heire could not do so. A subject of the King of *England*, enters bond to a subject of the King of *Spain*, enemy to the King, it is void to the party. yet the King shall have it and recover the debt which the obligee himself could not do. The King grants *Consuants* of plea in the Mannor of D. then a new action is given by Statute which was not before, the Grantee shall hold plea of this though it was not in the Grantor. *Vide 4 Report 23.*
- 8 Report Case *Swain.*
- 5 Report Case *Knight.*
- 5 Report Case *Mallory.*
- 19 E. 4. 6.
- 22 E. 4. 23.
- 7 H. 4. 1.
Fitzh. Prohibition. 10.

103 *Nemo bis punietur pro uno delicto.* An Ecclesiasticall person recovers damages in trespassse, hee shall not be punished again in the Ecclesiasticall Court, but this seems *quoad partem ipsam*, but by suit *ex officio* he may, so the partie against whom damages are recovered in trespasss may bee fined at the Kings suit upon Indictment, &c. and so in many cases, where the wrong trenches upon severall persons, as a servant beaten, so in case Baylor and Baylee they shall have severall actions. So Disseffor and Disseffee tenant for life, and he in the remaynder shall punish the forger of false deeds. See 40 E. 3. 11. 43 Aff. 9.

7 H. 4. r.

Fitzh. prob.

ibid. 10.

20 H. 7. 5. 9.

15 E. 4. 25.

104 *Negativum nihil implicat, in a precepto quod reddat.* The tenant wages his law of non-sommons, this doth not imply that he was tenant, nor shall conclude him, others *contra*, one pleads, *ne chasapas*, in Frank chase of the Plaintiffe, this is no granting that hee hath a free chase, but hee must prove it. One prayes to be received the demandant sayes that hee hath nothing in reversion day of Writte purchased, this doth not inferre that hee had after the writ purchased, but if he hath

22 H. 6. 41.

33 H. 6. 16.

20 E. 3. 26.

H

hee

48 E.3.13.14. hee ought to have mentioned it upon his Prayer.

104 *Nemo tenetur seipsum prodere.*
And for this in Cases criminall he may refuse to answer to matters which tend to prove evidence in this, and if hee deny the matter, it seems no perjurie to be punished though hee answer otherwise then the truth is, and so Sir *John Walter* held in case of an answer of a defendant in Star-Chamber, hee should not be charged in this for perjury. Exception. There was a man examined upon oath of goods of the Kings which were devised to him, and come to the possession of the defendant: and a juror may be examined upon oath if he have sufficient free hold, this is no crime, &c.

12 H.7.29.

105 *Negatio duplex est affirmatio.*
A distresse was pro servitio infelto. The defendant sayes, *Quod non fuit infelto*, and ruled as good a plea, as if hee said it was done, though *Conisby* said it was but an argument in case of a grant, but it seems such Logically curiosity shall not hold to avoid a grant. It is said such a thing *Non oportet fieri, nec non* such a thing, though
such

9 H.7.13.

Vide Litt.220.

Institutes 1.
146.

such expressions are *duplex negatio*, yet its holden a good negation in Law, and no affirmation.

106 *Ovune est a defeter chose ceo ne ferra object alue.* One brings a Writ of conspiracie to defeate a villenage *cony- onus perfrand* it is no plea that hee is his villaine, so in *libertate probanda*. In error outlarie *pro fine Regis* is pleaded against him, and holden no plea, for hee is to defeate all by this Writ, in error for to adnul an outlary, if he is twenty times outlawed, it shall not stop him, but hee may go on with his Writ of error. The husband makes a Lease for life, of the land of the wife, rendering rent, and dyeth, the heire of the wife brings a *sur cui in vita*, the Tenant shall not alledge the reversion, and assents in the heire for that that he is to defeite this warrantie, but note where the colaterall thing to be defeated is a legall bar of the principall right, there it will stay him, as where a writ of error is brought to reverse a recoverie, and a colaterall warrantie is pleaded, this warrantie will bar him of his Writ of error.

42 E.3.14

8 E.4.6.

7 H.6.40

6 E.4.9.10

7 H.4.40

38 E.3

3 Rep.lin.col.

Case 61.14

6 H.6.3.

107 *On chose fait per implication ferra*

H 2

bone

Institutes 1.
180.

1 R. 3. 4.

4 H. 7. 2.

7 H. 7. 11.

48 Aff. 40.

Lit.

bone, & contra. A Letter of Attourney is to two to make liverie and seizin, and the one of them makes liverie the other being present, and nothing saying that is not good, but authority to three bayliffes, and to every of them, and two executes it, this is good because it is for the promotion of justice. A record is *Jurati. exacti comperuerunt, quorum duodecim super sacrum suum dicunt, &c.* and doth not say, *electi, triati & jurati*, this is errour though those words are implied in these words, *super sacrum*: Aid is prayed of the patron and ordinary, which are returned, warned and doe not come, it is as much in Law as if he had come pleaded, and assented. A termor doth not come to save his default, it is as much in Law as if he had come into Court and said, that hee would not save his default. In an Assise the Sheriffe returns, the Baliffe was attached, and exception taken because the Sheriffe did not say, the partie could not be found and ruled that it is included, and is well-enough.

108 *On chose serra, rule per le greinder part de le state.* Disseisee Releise to the disseisor, after he had made an estate for life,
his

his right to this free hold is gone also. A 25 Aff. Cognisee dischargeth the reversioner, or purchase, the reversion, the particular estate is freed also: Lessee of a Mannour, to which a villain regardant (is) the Lord in reversion manumits the villain, it seems this shall binde the Tenants for years, Tenant in dower releaseth her right to him in reversion upon a lease for life, her right is gone even during the *life of the Tenant* for life. A menaltie is granted for life, the remainder in fee to the Tenant, it is extinguished in all: 9. Report Case, *Ascough & Quiks Case* *ibid.* Land is given in taile, the remainder to the King, the tenant in taile shall hold of none. *Fallit hac regula aliquando.* A. is impleaded who hath nothing in the free hold, fee discends, this shall not make the writ good, but if the reversion of the fee discends to the freehold which he hath purchased, *this makes the Writ good.* A Parson makes a lease, the Patron who hath the fee simple confirmed, this shall not make this good against him, hath a grant of the Parsonage for yeers, &c. See 2 Report *Beckwiths Case*, Instit. 1. 298.

14 E.4.6.

8 Report Case

Althams 151.

9 Report Case

Ascough.

1 H.6.2.

Dyer 133.

7 Report Com.

Bedfordscase.

109 *Ourneserra* sou judg, demesne, pay-
H 3 master,

12 H. 8. 1.

master, carver, &c. Lessor covenants to repaire the house, if he doe not the lessee may pay himselfe of the rent. Gardian of a Church, at his own cost repairs the Church, and for amends deteined ten lodes of stones of the parishioners, for which the successors Gardians bring an action of accompt, and adjudge that hee may lawfully deteine them, *aliter* of a servant Baly, &c. who doe disburse money, &c. See the cases of Tailors, Hostlers, &c. who may deteine Robe, Horse, &c. till reasonable satisfaction.

37 Eliz. Case.
Methold and
Wing.

Report case.

110 *On Chose in lieu ferra de mesme le nature.* Land escheat to the Lord who is in of the Signiory by discent, so shall hee be of the land, and shall have his age, and if the Signiory was in taylor, so shall the land it self be, and the Donor of the Signiory shall have a *formadon in reverter* if hee dyes without issue. A fine is acknowledged of a Signiory and tenancy escheate, a *Scire facias* shall be of this land, and he shall not say nient comprise, for it shall be said parcell of the Mannor which comes *in loco.*

16 H. 4. placito
P. imo & Kell
204.

46 E. 3. 4.

48 E. 3. 11.

111 *Parum differunt que re concordant.* A declaration was to have a Faire
three

three days, and ruled that two dayes and two half dayes will mayntain this declaration. An assise was brought against *Major* and *Comminality*, and found that the *Major* and *Bailiffs* did the disseisin, but because no more was of the *Comminality* then the *Bailiffs* it was held good. But note where there is an apt form in the Register, there a man shall not differ from it. A *Precipe quod reddat* is forty and ten acres of land, &c. and the Writ abated, *quia non fuit quinquaginta*. The moiety of twenty shillings and ten shillings is not all one, See *Institute* 3. 131. simile in point of pleading. See 17 E. 4 3. *Testamentum & literas testamentarias* all one.

112 *Parols ou voilent amount al act & contra*. A condition of a bond was to permit I. S. to remove his goods, and denyal by word to remove them is no breach of this condition, without averring of bolting or locking the doore against him, &c. But note where its said generally that such a one *impedivit*, interrupt or disturbe, &c. it is good without more as it seems and shall be intended actuall disturbance, yet see 47 E. 3. 24. *Contra* that

3 Report 76.

22 H. 6. 17.

45 E. 3. 3.

26 Aff. 17.

Dyer 240.

he ought to shew some cause or act done in his pleading. A Commoner said to the Lord of the soyle that the soyle was his and commanded him to cut no trees, this will not amount to a disseisin.

113 *Parols subsequent bounded or qualified by the precedent, & e converso.* A termor covenants that for any act by him done, the assignee shall enjoy against every man, this is no *absolute Covenant* that he shall enjoy. A bond to make sufficient estate as *A* shall devise, these last words take off the vigour of the former for the condition is well performed though the estate he makes be insufficient, if *A* devise this. A Covenant is to surrender upon request, and to permit *A* to take the profits, the word *request* doth not goe to the latter clause, and he may take them without request. Actuell seisin and possession spoken of the word actuell goes to the first onely. *Scilicet Seisin, vide 49 E. 3. 16. 4 Report Case Palmer.*

3 Report 23.

Pasc. 4. Car.
Lady Smiths
Case.

4 Report Case
Benill.

39 H. 6. 9.

114 *Parols: font plea.* The condition of a bond is if the Obligor *do not pay*, that then the bond shall be void, so it is that the Obligee shall pay, &c. both are good.

good and shall stand, and it is his folly &c.

And not like the case where the *solvendum* 4 E. 4. 29.

was to the *Obligor*, for this may be omitted and is void, *Ergo* it shall not hurt. A

Bond was made T. T. Sheriffe of W. in *Com. perdict. pro pradiet.* & ruled nought

for the senselesnesse of the word *perdict.* but for *parolls font plea*, *Vide placit hic* 151.

Trin. 21. Jac.
Case *Novel. in*
B. Roy.

115 *Pœna aptabitur damno.* If a stranger commit waste in my land by

which I lose treble damages, in trespassse against him damages shall be recovered

treble. Offence against a statute shall be punished as that says, and so at the com-

mon Law as that directs.

44 E. 3. 27.

9 Report Case
Hussie.

116 *Pœna sine culpa.* Assise is against husband and wife, and shée sole did the

wrong, and there is no other forme, Yet the plaintiffe shall be amerced as to the

husband for naming him that did nothing and yet he cannot help it.

7 H. 7. 2.

117 *Pœna delictum super abit.* A man lets houses in decay at the time of letting

and they are burnt by his negligence, hee is bound to make them new. A. had re-

covered forty shillings if the Sheriffe had made his returne by a legall officer, in an

action upon the case for this, he shall reco-

40 E. 3. 6.

38 Aff. 13.

ver against the Sheriff twenty Marks.

118 *Particeps criminis & non pœna.*

6 Report Case
Bruerton.

Tenant by entire service ceaseth, the Lord recovers in this part the cessor was, by this he shall lose his entire Signiory, and the tenant shall have benefit by it. Husband seised of land in right of his wife sowers the land, and after he himselfe sues a divorce, *Causa precontractus*, yet he shall have the Crop.

5 Report
lands case.

119 *Pœna tollitur cum culpa, vel sequitur culpam.*

14 H.6.26.

5 Report 49.

The King pardons all alienations, the fine due by this is also pardoned, if a contempt is pardoned, the amercement also is.

120 *Propositio hypothetica taken Categoricè.* If say to I. S. if hee will beat mee I will beat him, and this without any provoking words, this is a menace and an assault, and the if is idle. Administration is committed to two, and the one being present says, that he will take the administration upon him (if the other will agree) hee is administrator presently till the other disagree. One says to I. S. if thou go to London, thou art an arrant Thiefe, it seems these words are actionable, and shall be taken absolute. The defendant in action

37 H.6.20. aut
eo circiter.

37 H.6.28.

of batterie and menace, &c. justifies thus, he saith that if the tenants of such lands will kill or maim him, hee will himselfe defend, and will rather beat or maim them then they shall him, and this holden a good justification. I will prove him perjured if hee will justifie his answer in Chancery an action lies.

10 E. 4. 6.

3 Car. in b.
Roy Corbols
case.

121 *Principio non valens tractu temporis non convalescit.* A high way is granted to mee, to B. acre where I have no free hold in it, albeit after this grant I purchase B. acre, this shall not make the grant good. A suit is begun in London for the same matter, for which a suit is depending in the common place, this is ill begun in London, now a nonsuit after in that in the common place shall not amend that in London, or make it of any validity. A Bishop makes a Lease for foure lives, and one of the men for whose life, dies in the life of the Bishop, this shall not make it a lease for three lives within the Statutes, and 1 Eliz. vide ad idem 11 Report Case, Auditor Curle, & 4 Report Druries Case. A man leases land for life, and then grants the trees which grow there, this shall not be a good grant after the Lessee dies. I sell

21 Affr.

14 H. 7. 7.

39 H. 6. 12.

10 Report 62.

21 H. 6. 46.

4 Report Case
Herla:

Pl. 432.

9 Car. in b. Roy
Smiths case.

4 Report Case
Rawlins.

9 H. 4. 1.
Vide 8 E. 3. 24

E. N. B. 73.

2 Report Case
Lord Stafford.

a horse to I. S. upon condition to pay 40⁷ shillings at Michaelmas next, and before this day I sell him to another, the first vendee failes of payment, by which I release the horse, this will not make the second sale to be of force. Debt in the Stanneries is brought against an heire, which is not maintainable there by Law, now though he pleade a false plea, by which his goods are chargable there, this will not asserine their jurisdiction. *Exception*, this rule faiks in things which have *operation by estoppel*, as if I let B. acre by deed indented, in which I have nothing, if I purchase this afterward it is a good Lease. So in case of justice, one makes a return wch is no Sheriffe but afterward the Sheriffe avowes it was done by his Officer, this is good now. Recaption lies not upon a reprisall of a distresse in case a Replevin was sued in a Mannor or Liberty, and not in the Countie, yet if it be removed this writ now is maintainable. The same Law is where the impediment is removed, tenant in taile is theremainder in taile of the grant of the King. Tenant in taile acknowledges a fine, or suffers a recovery it shall not binde but if after the reversion is put out of the Crown

Crown it will binde. Tenant for life in-
 feffs him in remainder, in taile and his
 wife, this is no forfeiture or discontinu- 48 Aff. 2.
 ance, because if shee die first it will bee a
 surrender, but if shee survive a forfeiture.
 This rule failes also by long continuance
 of time, as where a man prescribes to have
 a rent by distresse, &c. It is no plea to say 13 E. 4. 4.
 it was always payed by coercion of di-
 stressse, albeit it was begun by wrong,
 &c.

122 *Principio valens tractu temporis
 non devalescit.* A man says to me see you
 I. S. I will kill him. I may him hold, and I 9 E. 4. 26.
 shall be excused of this imprisonment,
 though hee repent him, one makes a lease
 which is good, now by alteration, &c. it
 shall never come to be forgery.

123 *Principio dato sequitur concomi-
 tans, & sit sublato.* I have a Mannor in
 which is a Park and Fish-pond, I lease 11 Report
 this excepting the game, &c. And after I *Liford's Case.*
 grant the Reversion, the Deere and Fish
 shall passe as attendants. If a statute now
 made gives an action in case none lay be-
 fore, the same Proceffe, Judgement, and
 Execution shall be, as in the same action
 was in other Cases, where it lay before at
 the

10 H. 7. 10.

the Common Law, albeit this statute doe not say any such thing. He which takes upon him to grant a Rent, it shal be by deed, and hee shall tender a Deed for that purpose without any agreement for it. A bond is to a Sheriffe to discharge him of the returne of an Exigent, he shall discharge him of all. Concomitants and therefore though he return him *languidus in prisona*, which discharges him. If after distresse *ad habendum corpus*, goe forth to the new Sheriffe, and the old Sheriffe is distreined to the value of twenty pence, which is forfeit, now the Obligor hath failed of his promise. Cause of appeal is pardoned, and after an Exigent goes out, now the goods shall be saved which otherwise by award of the Exigent were forfeited, because the principall was pardoned.

124 *Presumptio stabitur donec probetur in contrarium*. Unity at the time of the dissolution discharges tythes upon the statute, but this is upō presumptiō of prescription, &c. Now if it appeare upon evidence, that part of the Mānor was in leas & paid tythes, this disproves the presumption, yet the residue of the Mānor shal be discharged of tithes. A man purchaseth land of I. S. who

3 Report 21.

18 E. 4. 21.

45 Aff. 9.

Michel. 40. &
41 Eliz.

who is impleaded in a *precipe quod reddat*, 50 Aff. 31.
 the law presumes him to be a Champertor
 without shewing hee was so till he may
 prove it otherwise.

125 *Quitacet consentire videtur*. He 27 Aff. 3.
 which is present at the actuall killing of a Vide placito 4
 man, and puts not debate shall be adjudg-
 ed assenting. A Writ is against foure, two
 wage their Laws of non summons, the o- 8 H. 6. 36.
 ther two say nothing, it is so strong an im-
 plication of jointenancie that they cannot
 deny it afterward, The Ordinary makes
 an appropriation to the Patron, it shall be Plo. case.
 said made by his assent, vide Dyer 62. Grendon.

126 *Qui sentit commodum sentire de-
 bet & onus*. He which hath any benefit of 37 Aff. 10.
 a river shall be charged with the scowring E. Bar. 305.
 of it, upon this reason it is that the assignee
 is chargeable in covenant to repair, though 5 Report Case
 he is not named. Dean. of W.
 A man grants a rent
 which is behinde, after he grants the land
 to another, the grantee dies, he which took 11 H. 4. ultimo
 the profits when the rent became arreare 4 Report Og-
 shall pay it, See 20 E. 4. 10, 12, 18. 26 nels case.
 E. 3. 64, 30. I reteine Counsell for one, 30 H. 6. 9.
 he shall pay the fee and not I.

127 *Qui sentit onus sentire debet &
 commodum*. This the reason if a feifment is
 upon

Report case upon condition, if the feffor or his heirs pay
Shelley 99. ten pounds before Michaelmas that they
 9 H. 7. 25. shal re-enter, the father hath issue a daughter and dies, his wife being withchilde of a sonne, the daughter paies the money, she shall hold the land. The husband and wife suffer a recoverie of land of the husband, and they vouch and have judgement to recover in value, the husband dies, the wife shall have nothing of the intended recompence in this case, for shee lost nothing.

Plo. case, *Eare*
and Snowe.

128 *Qui per aliud facit per se ipsum facere videtur.* An annuity is granted till he is promoted to a benefice by the grantor and his heirs in a Writ of annuity, he shews the plantiffe was promoted by his mother at his request and *benef.* In trespassse against A. and the evidence is that B struck me by his incitation and *benef.* A Bailly arrests mee, he may shew the Sheriffe did the arrest. A Rescoufe is made to the servant of an officer, he may return the rescoufe made to himselfe. An Abbot prescribes to hold land discharged of payment of tithes *dum propriis manibus, excolitur* if it be tilled by his servants, it is within the prescription, outre with my beasts

33 E. 1. anty 51

19 H. 6. 8.

Report Case
Frost.

39 H. 6. 42.
 Dyer 241.

20 Eliz. Dyer.
 277.

beasts is my entre, and so he shall declare,

Quare clausum fregit, vide 15 E. 4. 24. 21 21 H. 6. 5.
E. 4. 16. 44 E. 3. 44. 12 H. 7. Kellow,
Placito 7. But note this exception where 42 E. 3. 33.
it is matter of authority, it is otherwise,
he must doe it himselfe.

129 *Qui remedio destituitur reipsa va-*
let, si culpa absit. Upon this reason it is 6 Report 68;
that he who hath a reversion by way of
use, which is executed by 27 H. 8. shall
avow, have waft, &c. without attorn-
ment. Upon the same reason tenancie by
curtesie, shall be of a rent before seisin, To 3 H. 7.
make the obligor executor, is a release in 8 E. 4. 3.
law because he cannot release to himselfe,
vide 7 H. 7. 11. *fallit regula.* A parson pays
an annuity, and takes an acquittance, the
successor shall not have this, & yet his plea
of payment is not good without it. 44 E. 3. 18.

130 *Qui magis Scit & potest de eo*
magis requiritur. If a stranger is to plead
that such a one hath to name John Abbot 1 E. 4. 7.
of Ramsay, it is sufficient, but if the Abbot
himselfe was to plead such a plea, he shall
shew how his name is so, &c. See 13 H.
7. 19.

131 *Quicquid solo superstruitur solo*
cedet. And therefore if one build upon

22 Aff. 93.

my land, or plant trees they are mine. Exception, if my water by long continuance of time by little and little imperceptibly wear, and so run upon your ground, yet it is mine and not his upon whose ground it runs.

14 H. 6. 11.

132 *Quicquid remittitur fieri aequali facto.* A deed is delivered into equal hands, to be delivered to I. S. upon certain conditions, the conditions are broken, but he that was party to the delivery doth release the conditions, now it's all one as if they had been performed,

F.N.B. 30.

14 H. 7. 4.

133 *Quae non prosunt singula juncta juvant.* Tenant for life in remainder shall not punish waste, nor have a Writ of right, but if he joyne with him hath the fee, hee shall have both. Lessee for years grants part of his terme, and both joyne in a surrender, this is a good surrender, which severally was not good.

7 Eliz. Dyer
234.

134 *Quod necessario intelligitur non deest.* A fine with proclamation is pleaded, and he shews that *termino pasche*, 30 H. 8. So many proclamations were and *termino Trin.* 4. proclam: and Michaelmas term 30 H. 8. other foure, and exception was taken that no terme was added

to trinity, but ruled sufficient because it is added to Easter and Michaelmas & *necessario sub intelligitur* to the other

135 *Quod non capit discus capit fiscus.*

The appellee in robbery disclaims in the goods, and after is acquitted, the King shall have them, money is to be paid to I. S. who dies without heirs or extor, and sequestration was, &c. It is said the King shall have this money.

12 E. 4. 5.

48 E. 3. 37.

The Earle of
Marches case

136 *Ratio dicti minus valet quam dictum ubi differunt.* A Bishop certifies bastardie, and indorses the reason of it, because the husband was beyond the Seas seven years, the certificate is good of the bastardie, and the reason of it rejected.

38 Aff. 14.

137 *Relations.* It is a fiction in Law used to severall necessary purposes, sometime to make a nullity of a thing *ab initio*, which had an *esse* to certain purposes, and for other necessary uses in the Law.

138 *Relatio & non ad ultimum.* A Writ is brought of rescuing his goods, and denying to pay toll, *contra pacem*, &c. This shall refer to the Rescouse and not to the toll. Note where the thing is vain to

30 E. 3. 15.

30 H. 6.

32 H. 6. 17.

6 E. 3. 42.

6 E. 3. 12.

Sir Adam de
Clidrows case.

17 E. 3. 26 77.

1 H. 15.

1 H. 6. 23.

Plo Crofts
case.

4 H. 6. 3.

Dyer 45.

which the relation should be, as place &c. there reference shall not be ad ultimum in that kinde, where the place was not *pro loco*, but for another purpose. A carve of land is in demand, meadow, wood, and rent & an exception comes after all, for *stries* Acres, this exception goes to the Land. A demand is by Writ *quod reddat manerium de W.* & two acres of land *cum pertinentiis* in Clidrow. this *cum pertinentiis* shall be referred to the Manner, though it is in another Town then Clidrowes the same Law is where severall Lands in severall Towns are in demand *precipe &c. & interm. mesuagii* *illa terra prout aredium &c. illa re* to all, A bond is made to A, B, and C Yeomen, this goes to all three *desiring* *M. quafuit uxor T. S. de Marton Davie* this addition of place refers to M. A declaration was of a thing done at *M. juxta Ston in Com. Northampton*, and after the defendant at *Ston, in Com. predicta* *assime &c. Warwick* was in the Margent, and *Ven. fac.* went to the Sheriff of *War.* and tried there, and judgement was stayed for that *Northampton* was the last Town and County named, and the rule given

given that reference for the most part is *M. 35 Eliz.*
 to be *ad proximum antecedens*, though it is Case Child and
 absurd, or will overthrow a verdict, &c. *Towers.*

See *Plo. Adams case* 6. exception. 9 *Rep.*

27 5 *E. 4. 126. F. N. B. 2 D. 18 H. 8. 1. 6.*

Rep. Sir H. Finches case.

129 *Relation will rectifie incertainties*
in place, time, measure &c. A condition of
 a bond was to discharge him of such a rent
 against R. & also to pay his arrears incurred
 before Michaelmas next both shall be be- *18 E. 3. f. barre*
247.

fore Michael, by relation to this subsequent
 word Michaelmas. A Lease is of W. acre &
 rent to be paid at D. upon the feast of St.
Michael, and if it is behinde by 40 daies
 to reenter, though no place is appointed *Plo. 70.*
 where it shall be paid at the 40 dayes end, *Kidwalleys*
 it shall be referred to D. Condition of a *case.*

bond is to make a lease before Michael-
 mas to the Obligee for 31 years, if A will
 assent, and if not, then for 21 years, A *18 Eliz. Dyer*
 will not assent the lease for 21 years ought *347.*

to be made before Michaelmas. Assise of
 the moitie of a house, a carve of Land, and
 40 shillings rent, and ruled onely a moitie
 of all is in demand. A man grants ten *24. Aff. 2.*
 acres of his land in D. *simul cum commu-*

36 Aff. 3.

in aposture in omnibus terris suis; This shall be in D. onely, and not charge his lands elsewhere.

14 H. 7. 16.

140 *Relation shall make things have been, as if they never had been.* The husband disagrees to a feffment made by his wife, it is void *ab initio* so that he may plead *ne infessas pas.* A devise is that executors may sell land &c. when they tell all mean charges made by the heire in the interim shall be avoided by relation to the time of the death of the testator. I disseise A. to the use of B. the disseisee releas to me, and then B. agrees, this agreement by relation shall be as if he had agreed before the release, and so shall defeat it. Jurors alien their Land away between the teste of the writ of attaint and judgement, yet they shall be charged to the King for the estrepment by relation. Cause of assise brought was for rescuing a distresse taken for rent, and then an office is found which intitles the King, who seises the Land, and then an *ouster le main* is sued, the assise is gone for ever, because the King shall bee laid in possession at the time of the rescous by relation of this office, upon whose possession

4 H. 7.

14 H. 8. 10.

14 H. 8. 18.

63 E. 3. 16.

31 Aff. 1.

session no distress could be made. *See Plow.*

281. 10 H. 7. 18.

141 *Relation to defeat a thing, shall be intent ad unum* Husband and wife tenants in tail, shee brings dower after his death, this unsettleth the estate was joynt in them two, but shall not have relation to defeat a Reversion granted by the reversioner. Atournament makes the services past *ab initio*, yet nothing of the arrears shall be paid in prejudice of the tenants which are third persons. The Lord is intitled to the marriage of an heire of the disseisee, the heire release to the disseffor, hee is in now from the time of the first disseisen of a good estate, but this shall not hurt the Lord of his Wardship, &c. An infant is infeoffed and disagree, this defeats it *ab initio*, as to himsele to avoid all dammages, but not to make a void gift by his feffor good: a remainder is limited to the King, and before inrolment of the deed he grants this over, and then the deed is inrolled, this will not make the grant good.

3 Report Case
Butler and B.

48 E. 3. 16.

11 H. 7. 8.

7 H. 6. 12.

3 Report Case
Butler and B.

ibid.

142 *Relation will yeeld to necessity.*

The husband is essoyned, and at the day

I 4

fails

fails to bring in his warrant, or doth not appear, the judgement shall relate to the time of the protection, or essoign cast, &c. yet his wife may be received for no time covenable was before to pray to be received untill default, &c.

143 *Relation shall not be to take away things collaterall, &c.* Trespasse is made to A. and after his estate is defeated by condition performed or Act of Parliament, this shall not relate to take away his action vested, &c. A bond is delivered to my use, I disagree this shall now loose his force from the time of the disagreement onely.

144 *Relatio ad principium, &c.* Lessee for yeers is bound to I. S. to make to him the best estate he can, and afterward the reversion, or releases to him, the lessee shall be discharged of the bond if hee grant the estate he had at the bond making. Estranger abates, after the death of the father, the son dyes his wife shall not have dower for this abatement shall relate to the death of the father. Administratour *de son tort* takes letters of administration, this shall relate to the death of the In-

2 E. 4. 17.

21 Aff. 17.

4 H. 7. 11.

3 Report Case
Butler and Ba-
ger.

12 H. 8. 5.

21 E. 4. 60.

9 E. 4. 33.

18 H. 6. 22.

Intestate. An Escrow is delivered by a feme sole, if she marry or dye yet by relation it shall be good. An Act of Parliament hath relation to the first day of the Session. Presentment *tempore belli* is not good to gain possession, though indictment was *in tempore pacis*, a blow given in time of *in sane memory*, though he dye when of sane memory it is not capitall. Sale of goods is out of the market, and after they are brought into the market and delivered there, yet it relates to the first sale, &c. and so takes away no property of an Estranger.

14 E. 4. 2.

21 H. 6.

3 Report case.

Jennings and B.

33 H. 6. 17.

1 Report 199.

1 Mar. Dyer.

99.

145 *Relation to time, place, &c.* In case of atteindor by verdict in felony, It shall relate to the time of the fact done, of outlary it is otherwise, but in case of treason outlary shall relate to the fact done.

30 H. 6. 5.

Atteindor by Act of Parliament shall relate to the first day of the Parlia. one shall not be accessory to a felony by relation, but onely from the death not blow given.

35 H. 8. B.

Crompt. 77.

Dyer 59.

Arbitrement was pleaded at D. *scilicet* that such an one shal grant an Annuity out of the Mannour of S. & in conclusion says, *quod loco supradicto, &c.* this shall relate

to

32 H. 6. 17.

to D. and the *Venire facias* shal be thence a *Venire facias* was *ad recognoscendū*, if an Executor did administer *aliqua bona* that were the Testators after his death, these words after his death, shall relate to administer and not to goods, to examine whether they came after the death or not.

7 H. 4. 39.

Hill. 19. Eliz..
Goppers case.

148 *Relatio sit ad accommodatior a. A* man leases for the life of I. S. & after gives all his lands & reversion of this parcell *habendum* all his lands and parcell *cum acciderit proxime post mortem* I. S. these last words shall relate to the reversion onely.

9 Report Case
Hickman.

The Obligee doth acknowledge he is satisfied, all bonds, and promiseth to deliver in all bonds (except one of ten pound, this exception goes to the word *satisfied*, and restrains this and not onely to the words deliver in, see the word (*such*) is to equals in the mischief and not to any before in the statute there named. See 22 E. 3. 4. Condition of a bond was, if the Defendant enter peaceably, so that the Plaintiffe may bring his action before *Michaelmasse*, in this case, these words before *Michaelmasse* shal relate to the en-

32 Report 32.

37 H. 6. 18.

re only, and not to the bringing of the action.

149 *Relation to avoid thing or a vaine thing will destroy that was good in the premises.* As a grant is by me of my lands in D. which I had by descent, or of the gift of I. S. if this be false it will destroy my grant, A bond to performe all Covenants between A. B. and C, in such an Indenture, and there is not any such, the bond is not good, one makes an acquittance of debt, which was recovered by a judgment, &c. and there is no such it is void, husband and wife are seised of land, and a grant is made of the reversion of the land which the husband holds, this is void to passe this reversion. *Contra sepius.* A bond is of thirty pound and the Obligee upon receipt of twenty pound &c. makes an acquittance thus, received in part of twenty eight pound, &c. the summe of twenty pound, this shall not make frustrate the acquittance if not that averment is that twenty eight pound was for another contract. A reversion of lands in D. *que omnia sunt*, in lease to I. S. for life is granted, though no such lease is, it is good. See

37 H. 6. 18.

11 H. 7. 6.

33 H. 8. Dyer
50.

11 ff. Grants 6.

48 E. 3. 18.

Plo.

Plo. Case
Throgmorton.

17 E. 3. 35.

Sir Iohn Hard-
shals Case.

Plou. Alams case. 5. exception, 10 Rep.
Legus case, an indeture of defelan s refers
to a Statute made *primo Maii &c.* and it
was another day, yet it is good because an
agreement was in the summe of the Sta-
tute, and name of the parties. See 20 *Aff.*
8. 26 *Aff.* 38. 31 *Aff.* 1.

33 *Aff.* placito
ultimo.

148 *Semel malus semper presumitur
malus & contra.* A Jury was challenged
cum panello, for being made favourably
by an Officer of the Sh-riffes, and upon a
new *Ven. fac.* part of the same jurors are
returned by the Sheriffe himselfe, and ru-
led bene, and the suspition shall not be
said to continue.

5 H. 7. 39. 40.

149 *Similitudo non currit quatuor pe-
dibus* Resommons is it a quod sit (*in eodem
statu.*) Yet a default saved, which was
before discontinuance, to essoigne lies
which did not before.

46 E. 3. 17.

20 E. 4. 11.

150 *Sic utere tuo, ut non laeas alieno.*
Lessee for years shall to take his hedge-
bote, that he doe not destroy common of
estouers which another man hath there,
he which hath common in Land not inclo-
sed, shall keep his cattle out of an estran-
gers land. If beasts are driven by the high-
way

way, he ought at his perill keep them out
 of the Lands adjacent to the way, &c. ex- 20 E. 4. 21.
 cept in case where the owner is bound to 10 E. 4. 7.
 inclose &c. but note, prejudice may in-
 sue by my act upon my own land without
 danger, as where a man erects a wall,
 part upon my land, and I destroy this upon Pasch. 34.
 my land, and the rest by that means falls Eliz. C. *vigo-*
 down, this is excusable. fordvers. Gills.

151 *Singulare distributive sumpta
 aequali plurali.* Tenant in assise makes se-
 verall bars, & the plantiffe makes severall
 titles, and the tenant pleads *veignel esse* Dyer 328.
supra titulo, this goes to all the titles. A
 lease is *pro uno anno*, and if they agree
 that he shall have the land for three years
reddendo durante termino predict. ten
 pounds annuatim this reservation goes to 10 Report
 both termes. In debt the plantiffe de- Case. Loefield.
 clares that the defendant and his bro- Mich. 23 Eliz.
 ther were bound in an obligation *sigillo Case Briton &*
suo sigillat, this extends *distributive* to Bolton.
 both.

152 *Synonyma* will not serve in our
 Law. The Statute W. 2. forbids entre,
ubi ingressus non datur per legem, now 9 H. 6. 19.
 if in an indictment, &c. it is layed, *quod*

5 Report Case *ingressus est illicite*, this is not good, for an indictment for murder by thes words, *ex malitia precogitata necavit*, &c. is not good without the word *murdravi*.

153 *Surplusage*, what power and influence this shall have in Grants &c. And note some use may be made of it as where a contract is to deliver a horse &c. and a bond isto deliver it, now albeit by the contract the property be vested in the obligee, yet in this case if the horse is tendered to him, and he refuse, he hath lost the propertie, because this bond which was more then needed hath determined the contract, *nota*.

152 *Totum continet suas partes & e converso*. The Statute *W. 2*, which gives a writ *ad petendum advocacionem decimarum*: implies he shall have this writ for a fourth part of Tithes. A statute is made that the adjournment of Michaelmas Terme shall not hinder fines &c. This implies that though part of the Terme onely is adjourned, that shall not let, but fines are well levied. A Statute is if a man is redisseised of land, hee hath recovered before, such a penaltie shall bee, if he is redisseised

8 E. 4. 22.

Perkins. 784.

30 E. 3. 13.

7 Report Case
Bulwar.

2 Eliz. Dyer
186.

Institut. 1. 154.

seised but of part of that Land, it is with-
in that statute. A man hath a way for
foot, hories and waynes, if this is made so
strait that wayns cannot passe, which is
onely part of that he hath way for, yet the
writ shall be, *quod obstruxit viam* gene-
rally.

155 *Totius & partis eadem ratio.* Aid
was granted for part of the Land charged 22 H.6.2.24.
with rent, it shall stand for all. He which
diverts part of a water shall be laid in law
to divert it all *fallit regula aliquoties*. A
liberate comes to an Officer to pay a hun- Institut. 4. 116.
dred pounds, if he have it all, he ought to
pay it, but if he want part thereof, hee is
not bound to pay that part, &c.

156 *Totum qui concedit partes negare
non potest.* It is alledged in Assise that all 23 Ass. 12.
the lands within the fee of Saint Peter of
Yorke were departible between the males,
and that the ten acres in question were
within that fee, and the tenant would have
said that these ten acres were not de-
partible, but was not suffered. This doth i Exception
not hold where the matter affirmed of par-
cell tends onely to alter the jurisdiction. As 9 E.3.18.
where a Mannor is alledged to be anci-
ent

3 Exception.

ent Demesne, hee may say that Black acre
parcell of the Mannor is Frankfee. *Fallit*
regula, also in case of time that which
may be said of a moneth of time cannot of
a week, &c. As the statute 5 *Eliz.* gives
a penalty against him trades by the space
of a moneth, not being an apprentice, &c.
if he trade but a weeke or fortnight hee
shall forfeit nothing at all within this
Law.

42 E.3.18.

3 Report Case
wimarke.

4 Report Case
Harlakenden.

10 E.3.40.

3 Exception.

157 *Tort, of his own wrong, a man*
shall not take advantage. I.S. takes from
me the release he had made, now I shall
plead it without shewing it. Lessee for
years cut trees, he shall not have avail of
this to keepe it toward reparations, &c,
Husband and wife are impleaded, and the
demandant holds the wife of the tenant
that shee cannot appear, this shall not turn
to a default in the tenant. See 4 *Report*
Case Sir Andrew Corbet, & 34 H 6. 11.
Regula, fallit; in case hee to whom the
wrong is done had it in his power to re-
medy it, there it shall prejudice him if he
doe not remedy it, and it shall be to the
availe of the wrong dore, as I am bound
to infesse I. S. before Michaelmas of B.
acre

acre, and the obligee, disseismee of that
 acre, here because I may enter and regain
 the Land and make the feff, if I do not I
 have forfeited my bond: So where Cove-
 nant is to build a house by the lessee before
 the end of the Terme, and lessor enter up-
 on him and outs him, yet hee is bound to
 doe it, or else the Covenant lies, unlesse
 there be speciall matter to excuse it, as if
 the other hold him out by force.

8 Report 92.
Frances Case.

36 Eliz. Case.
*Farewell and
 Barker.*

158 *Utile per inutile non vitiatur, nec
 emendatur.* Of this nature is all *Surplu-
 sage* in grants, deeds, &c. It doth nei-
 ther good nor ill. A. release to B. *ad
 primum diem Maii quod esset.* All Cove-
 nants, &c. this is a present release, and the
 subsequent words *ad primum diem Maii
 quod esset* are idle. A deed is that such a
 thing shall be done before Whit-Sunday
 next, being the first day of June, though
 Whit-Sunday is the fourth of June, this
 shall not frustrate the agreement, but shall
 be made on Whit-Sunday. Uses are decla-
 red in an indenture in taile, in which is
 power of revocation, and upon recitall of
 this deed he declares that *prædicti usus*,
 to him and his heirs shall be void, yet this

4 Report 93.

35 H.8. Dyer
 57.

Pasch. 1. Car.
 Case Bishop
 of Norwich.
 Vid. 41. Ass. 21

8 Report Case
Frances.

Institutes 1.

146. 147.

Vid. 30 H. 6. 14

14 E. 4. 2.

2 Report Case
Buckler.4 Report Case
Palmer.

10 H. 7. 19.

a good revocation, and the other words idle, *scil.* to him and his heirs. A rent is granted for legality of partition, this is good without deed, now annuity doth not lie though a deed is in this case made because surplus, &c. *Exception*, Sometimes idle and vain words will have operation, as A. release to B. *omni modis* (which the said B. hath against A.) this was adjudged a void release. Lessee for life makes a lease for three years, & then grants *tenementa predicta habendum* after Michaelmasse, all this is void. The Sheriffe in executing a *Fieri facias* takes upon him upon the sale of a Terme, to nominate the beginning of the terme, and saies it was 1 *Maii*, where it was another day: this surplus makes the whole execution null. An union was pleaded to be *concurrentibus his que iure debent*, &c. and by assent of the Ordinary, this surplusage expressly contradicts that was implied in the *concurrentibus his*, &c. in which the Ordinary might well have been intended also which now appears that he is not, and so vitiates all the rest, &c. for surplusage in cases of pleading, the Law varies upon severall

vetall distinctions, in one case it shall hurt
and not in another, where surplufage
makes a contradiction there it will doe ^{22 Aff.}
hurt; so in case of a Writ where there is
not substance to maintain the action, but ^{39 H.6.38.}
for to increase damages, it shall doe no
harme. *Plo.* 85. 46 *E.* 2. 3. 1 *E.* 4. 7. *Regi-* ^{37 H.8.3.}
ster 6. 6. 12 *H.* 7. *Kell.* 10 *H.* 6. 10. 8 *Re-*
port 159 *Dyer* 235, 236. 50 *E.* 3. 6 34 *H.*
6. 48.

159 *Void, in a Statute where it is said*
what sense it hath, &c. Obseeve first
where a Statute saies such a thing shall be ^{28 H.8. Dye}
void, yet the ordinary circumstances are ^{28.}
to be observed, which by law are requi- ^{3 Report 59.}
red, to avoid such a thing as entre, and the ^{*Plo.* 107.}
like. The Cannon saith that a second shall ^{*Institutes* 1.}
Benefice void, see if before sentence, *vide* ^{273.}
Statut. 21. *H.* 8. by that it is void pre-
sently and lapse shall incurre, and pro-
cheine avoidance is not graitable by a
Patron because it's void. If it be inacted
that a bond made by I.S. shall be void, as
upon the Statute of 23 *H.* 6. of Sheriffes,
such a clause is for a bond taken by a She-
riffe otherwise then is there directed, yet ^{5 Report 115}
he shall not plead *non est factum*, but
K 3 the

- Plo. 169. the speciall matter and demand. judgement, See action Stat. W. 2. Case 1. which sayes, *quod finis sit nullus*, yet it is not absolutely void but avoidable by error, and not otherwise, the Stat. of 3 Eliz. is that grants of Deanes, &c. shall be void, yet is not so in all respects, for it's good against him that made it, but void as to the successor.
- Plo. 137.
- 11 Report 73.

- 160 *Void, where a thing shall be for part, or for a certain time onely.* A man contracts for wages beyond that the Statute allows, this is void as to the wages, but shall charge him in an action upon the Statute. A man enters into Religion, and his wife aliens the Land, of which they were seised, and then he is darreined, he shall avoid this for his life, but the alliance shall hold it against the wife, so a terme may be avoided by tenant in dower
- 3 E. 4. 7, 8.
- Abridg. assis. 87.
- 7 Report Com. Bedford's Case.
- Se revived afterward, and it shall be good against the heire.

- 161 *Void as to that was intended, may yet be good and effectually to a collateral purpose.* An appeale is void being brought by the youngest son, yet this shall him excuse to be indicted, if the party is
- 21 H. 6. 29.
- ac-

acquitted upon this, but otherwise it is in
 case a woman brings an appeal of the death
 of another, then her husband because it
 is apparently ill within the record it selfe.
 A release of a feme covert is pleaded, this
 is void to make a barr, yet it will amount
 to a waiver of a good plea pleaded before
 to the writ. An issue joyned in waste was
 a *jeofale*, the same plea notwithstanding
 may bee a confession of the wast. Re- 18 H.6.29.
 tourne is by one Coronor of a Rescous 10 Eliz. Dyer
 upon a writ made to more Coronors, it is 272.
 a voidereturne, yet it will be a good sug- 39 H.6.42.
 gestion upon which a processe shall issue
 for the Rescous: But *nota*, such a void act
 shall never bee good or avaleable in the
 same kinde it was void. Tenant in taile
 is, the remainder to him selfe in fee, he
 makes a feofment by deed, and a letter of
 Atourney, &c. if this livery is not execu- Pasch. 11.
 ted the remainder shall not passe by the Car. Case.
 deed: Bargain and saile is of a mannor, Baker and
 and all the trees the deed is not inrolled, Hagget.
 this shall not work as a grant of the trees
 being of no effect for the Land. 11 Report 48.
 A man leases a mannor, and hath nothing in 16 H.7.3.
 demesne at the time, but in services these

4 Eliz. Dyer
215

1 H. 6. 4. 7.

18 E. 4. 8.

19 E. 4. 2.

5 Report Case
Gooche.

22 Aff. 49.

shall not passe, but *this exception hath its exception*, as where the thing is void, *quod modum onely* as a fine, upon 4 H. 7. is not good for lack of proclamations, yet it's a good fine at the Common Law. A Statute is acknowledged which is not good, for some failers, &c. yet it is a good bond.

162 *Volenti non fit injuria*. A man shoots giving warning to all, &c. and one will go to the mark and is hurt he is without remedy. I am bound to make a house if you prohibit me to come upon the land I may plead this in bar, *exception* is where the fault and injury is essential to the thing and vitiates it, and is not personall, the law is otherwise, as where I will exchange with one hath a bad title and its knowne to me. So if I know of fraudulent conveyance and you buy the land, in both these cases the party shall have the remedy though hee was willing to the wrong, &c.

163 *Verba discretiva*, shall not extend to joyn words *& contra*. The Amercements of my tenants are granted, this shall not extend to those *hold of mee and of others*. where its spoken of an act to be made by

A. it shall be by him sole and not joyntly *Perkins. 158.*
 with others, but a surrender of all his lea- & 310.
 ses, is good of those hee holds joyntly as
 of others. Statute 8. H. 6. is if one enter
 with force or peaceably and hold with *Pl. 8. 6.*
 force an action lyes, yet if both are done *3 E. 4. 19.*
 the action lyes.

164 *Verba conjuncta non capiantur*
discretive & contra. A *Recordare* is to
 remove a plea betweene A and B. Plain- *3 H. 7. 14.*
 tiffs, and C. and D. Defendants, and every
 Plaintiffe would have counted severally
 and not permitted, for it shall be intended
 joynt plaint onely. A statute speaks of an *29 E. 3. 20.*
 act to be done by two parties, this shall be
 intended joynt act. *5 E. 3. 14, 15.* *Contra*
 wherethey shall be taken discretive, three *2 R. 3. 18.*
 men then submit of all matters betweene
 them and A. this extends to matters se- *21 H. 7. 29.*
 verall among them, as well as joynt. Seve-
 rall Demises and Rents are in one Inden-
 ture, and in conclusion hee covenants to
 pay *reditum predictum*, this goes to all
 the Rents. Two joyn in a grant of *omnia*
bona sua, so a release to B. and C. all acti-
 ons, this extends to their severall goods *19 H. 6. 4.*
 and severall actions to have operation to
 the

the most advantage against him made the deed or grant. Three severall men covenant separatim by Indenture and in this, one is bound to perform the covenants made between *A.B. & C. &c.* he shall be bound to performe any covenant made betwixt them seperatim. Severall rents are behind by a Prior and his Predecessour, and in his Count he concludes, *non dum rediderunt*. And this holden good though part was due in the time of the Predecessor, and part since.

11 H. 7. 6.

17 E. 3. 2.

8 E. 3. 2.

165 *Una hirundo non facit ver.* A Lord hath allowance one time to have *Connassans of plea, ubi ipse pars fuit*, this will not serve at another time to hold such plea.

38 H. 6. 13.

21 H. 6. 20.

166 *Universale non comprehendit omne particulare.* A man is retained to serve in all occupations. In debt for wages the defendant may wage his law, which yet hee cannot do in *case of husbandry, Ergo. In decies tantum*, it is no plea for the defendants to say that they tooke not any mony for saying their verdict, but they shall say, *nec aliquis eorum, &c.* See 3 Report, *Maquesse of Winchesters Case*, where all rights in a statute did not extend

(137)

to right of action. So where an exigent 4 H.7.8.
is returned against three, *quod non compa-* 6 Report 56.
ruerunt it must be *nec aliquis eorum com-*
pervit, &c. else its not good.

166 *Ubi duo iura in una concurrunt*
persona eque est ac in diversis. Articuli Institut. 1. 194.
super chartas ordaneth. That in case of 195.
death of one within the Verge, the Coro- Institute 3. 134
ner of the County, and of the household of Holcroft Calc.
the King shall joyne in the Inquire, and
holden if *one is Coroner* of both he shall
well execute this authority.

167 *Vigilantibus & non dormientibus*
subveniunt leges. This the reason of lapse
incurring for lack of presentment. War-
ranty barring for lack of entry, discent
barr entryes for lack of clayme, title to te-
nancy by curtesie is lost for lack of entry.
statutes of limitations barr actions, the first Litt. 552.
Grantee that its attornment shall have
the Reversion or Signiory, &c. and a hun-
dred Cases more are ruled upon this
ground. A man is outlawed and error is in 36 H. 6. 12.
the Record this may be reversed, the same
terme by plea, but after not. A trespasse is
committed to two joynttenants, and each
of them releases, and after brings trespasse,
and

and the defendant pleads the release of one of them which is found against him hee shall not be afterward admitted to plead the other release, because he hath surceased his time.

Finis Topicorum legum Angliæ.
Which was allowed to the Presse two yeers since *in furore belli*, but the Booksellers were unwilling to Print it then because it was in French and few in town.



